

PAUL K. HAMANO
ATTORNEY AT LAW
P. O. Box 574
Hilo, Hawaii 96721
Phone: (808) 935-3336 Fax: (808) 935-3340

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Hawaiian Paradise Park Owners Association
15-1570 Makuu Drive
Keaau, Hawaii 96749

Re: Upcoming Elections and Complaints on Social Media

Respectfully to the Board of Directors:

- I. PRESIDENT KAWAAUHOU DID NOT AND NEVER DID BRING CLAIMS AGAINST THE ASSOCIATION BUT INSTEAD BROUGHT AN ACTION ON BEHALF OF AND FOR THE BENEFIT OF THE ASSOCIATION BEAUSE AT THE TIME THERE WAS NO FUNCTIONING BOARD FOR THE ASSOCIATION

As you may know, President Larry Kawaauhau came to me in 2019 wanting to get the court's help in resolving a situation where the majority of the board of directors resigned, the remaining board members did not constitute a quorum to engage in business, and President Kawaauhau's belief that two remaining directors, who were previously officially reprimanded by the board, should be removed. Contrary to complaints, allegations and rumors posted on social media, President Kawaauhau was NOT suing or bringing a lawsuit against the Association, but was doing the very opposite. President Larry Kawaauhau filed Civ. No. 19-1-184 on behalf of the Association as a derivative action "to enforce the rights of HPPOA, the HPPOA having failed and/or been unable to enforce the rights which should properly have been asserted by it, and to correct wrongs to the HPPOA as specifically alleged below." (Complaint, par. 8). President Kawaauhau brought an action to protect and further the interests of HPPOA because it was left without a functioning board so he sought the court's intervention to do what it thought was right for HPPOA. In fact, Plaintiff Kawaauhau filed what is called an "ex parte" motion (to have a court make an immediate order without lengthy waiting times or having a hearing with opposition) to immediately appoint a master or receiver (a neutral third party to act in place of the board) for the Association to, among other things, act as the board, make recommendations as to how the board vacancies should be filled, overseeing and supervising elections, and taking control of the funds and property of the Association.

Some may argue that since the Association is the first defendant named in the lawsuit, that President Kawaauhau by definition brought claims against the Association. But this is how these types of derivative action lawsuits are typically styled because it is not the Association that is bringing the claim, but someone with statutory authority to bring a lawsuit on behalf of the Association. Moreover, the Association could not be named also as a plaintiff because with a non-functioning board, board authority could not be obtained to make it a plaintiff. Lastly, the

Association had to be made a nominal party to give the court jurisdiction to make orders affecting the Association. The Association therefore was clearly a necessary party to the action.

II. THE COVID PANDEMIC STALLED THE LAWSUIT THAT WAS FILED FOR THE BENEFIT OF THE ASSOCIATION WHICH RESULTED IN NO ELECTION PROCESS OR ELECTIONS IN 2020 BUT A FUNCTIONING BOARD WAS CONSTITUTED IN ACCORDANCE WITH THE BY LAWS OF WHICH THE COURT WAS INFORMED

Unfortunately, the court did not grant President Kawaauhau's ex parte motion for a receiver and preferred that the parties work things out. This led to the opposition (then directors Mayelin Stillwell and Leslie Blyth) attempting to get the court to declare that newly elected director Craig Crelly was not a current director, despite being newly elected. The court denied their motion (although the court did not finally determine that Craig Crelly was in fact a current director; in essence, it was factually disputed to be determined by a trial). After trying to get all parties to agree to the appointment of an interim trustee (neutral third party to run the Association), that attempt also failed. This forced Plaintiff Kawaauhau to again file a motion to appoint an interim trustee to act as the board and run the upcoming elections because there was no functioning board for the Association.

Plaintiff Kawaauhau's motion to appoint an interim trustee was never heard because of the worldwide pandemic that occurred which pushed back court business. By the passage of time, Mayelin Stillwell's and Leslie Blyth's directorship terms had expired. Under the By-Laws, specifically Article VII Section 6, which specifies that vacancies "shall be filled by vote of the majority of the **remaining** directors[,] and with Stillwell's and Blyth's positions expired, and elected director Craig Crelly's position disputed in the case by Stillwell and Blyth, the only undisputed remaining member of the board was President Kawaauhau who then appointed a new board. When Mayelin Stillwell and Leslie Blyth thereafter filed their own motion to appoint a temporary trustee, the court ruled: "So the Court is going to deny the motion on several grounds. One is that there are—**there is a duly-appointed board after the vacancies created by Miss Stillwell and Miss Blyth's termination of their term.**" The court also stated: "We don't want to see disputes among association members spending thousands and thousands of dollars. *** And I do hope, Mr. Hamano, that you guys can get on track and hold your election in 2021 and move forward from this, because I don't want to see associations in court spending a lot of the money litigating matters. It's all a bunch of volunteers. It's not a whole lot of money that each owner contributes, and each owner wants their money spent for road paving and subdivision improvements and not litigation."

Thus, the negative postings and innuendo on social media alleging that the current board is illegitimate and contrary to the By-Laws and/or that voting rights have been wrongfully disregarded is simply and plainly false in my view. The 2020 election did not and could not occur because there was no functioning board of the Association and Association business came to a halt, again which is why President Kawaauhau sought the court's intervention. And this was due in some part to an unprecedented worldwide pandemic which continues to interrupt and interfere with all modes of business, particularly gatherings of people of any sort.

III. THE CURRENT ELECTION PROCESS IS LEGITIMATE AND CONSISTENT WITH THE BY LAWS

This brings us to the current upcoming election where social media alleges that it is “rigged”, illegal, contrary to the By-Laws, and rights being trampled. It is true that the By Laws talk about a nominating committee being part of the election process and Article X, Section 1(b)(3) states that the “membership at its regular meeting to be held in October of each year shall elect a Nominating Committee comprised of at least five Association members in good standing.” The October 2020 meeting did in fact occur, but two members abruptly left the meeting causing the meeting to lose quorum which forced an adjournment. Thus, a nominating committee could not be voted upon at the October membership meeting. The Board decided perhaps the February 28, 2021 membership meeting could be used to vote in a nominating committee. However, since County and State COVID regulations prohibited outside gatherings of over 50 people, not everyone could be accommodated and those left standing on the outside were vocally upset and disruptive with yelling and screaming going on, with many asserting that they did not have to wear masks or to keep socially distant. It became so unruly that the registrars for the meeting felt the matter was getting dangerous so they called the police. A motion was made to cancel the meeting under these circumstances, it was seconded, and the motion was approved by the majority. Thus, for the two meetings that could have voted in a nominating committee, none succeeded for the reasons stated.

However, there are good reasons why the lack of a nominating committee is not fatal to a legitimate election. First, Article X, Section 1 of the By Laws regarding scope and authority of committees, states in part that “the membership, by resolution adopted by a majority of members present at a membership meeting at which a quorum...is present **may** designate and appoint one or more committees[.]” It also states under said section that the “designation and appointment of any such committees and the delegation thereto of any authority shall not relieve the Association, the board, or any individual thereof, of any responsibility imposed by law.” Notably, it is not an absolute mandate under the By Laws for the appointment of committees, and authority still lies with the Association, board and membership.

But more importantly, Article X Section 1(b) states: “Committees of the Membership. Committees of the membership are elected by the membership and include, but are not limited to, a bylaws committee, a finance committee **and a nominating committee. Committees of the membership are advisory. Actions of these committees are subject to review and approval by the board.**” Thus, whether or not you have a nominating committee, the board is still ultimately responsible for whatever duties it has under the By Laws. So while having a nominating committee is advisable to have, it is NOT absolutely necessary for it to exist because the By-Laws ultimately gives the board authority to take action for the nominating committee.

In fact, the designated duties of the nominating committee were carried out in full per the By Laws, such as giving adequate notice to the HPP community of the districts which are seeking qualified candidates with signage and postings from November through February. And the other main duty is to receive nominations from the membership and verify qualifications of nominees. Contrary to rumor and innuendo on social media, there is no discretion used in determining “qualifications” of nominees or candidates. The only “qualification” is that the candidate is in good standing (i.e. Article V, Section 10, “A member whose road maintenance

assessments are not in arrears.”) by the nominating deadline, and that she or he is in the district up for election. Thus, some of the social media accusations that “insiders” or current directors have kept out qualified individuals from running and that the election is “rigged” is entirely and completely false.

In light of these negative rumors, innuendos, and false accusations about the upcoming Association board election, I would hope that the word gets out to the general membership that it is in their best interests, and for the Association, that everyone participate and do the actual and timely voting to elect directors and to not be deterred by rumors that this is an illegal or rigged election. In my view, it will survive any challenge in court, particularly when at the last court hearing in President Kawaauhau’s case, the court emphasized that the Association should go forward with elections at the next cycle. The current board has done exactly that, instead of not having an election due to the unavailability of a nominating committee which is only advisory, and subject to the authority of the board.

IV. THE FINANCES OF THE ASSOCIATION ARE AUDITED EVERY YEAR BY ONE OF THE LEADING ACCOUNTING FIRMS IN HAWAII COUNTY

Social media and a few members have made accusations or caused negative innuendos of financial mismanagement, lack of transparency, and demands for a “forensic” audit. The Association retains, in my view, one of the leading accounting firms in Hawaii County, Taketa Iwata Hara & Associates. And the Association website posts audited financial statements from 2008 to 2020. Complaints about Association financial mismanagement or lack of transparency flies in the face of the yearly audit that is conducted on Association finances by one of the leading accounting firms in the County of Hawaii. Good accounting professionals know what to look for in auditing finances, particularly a non-profit association. It appears that to date, the yearly audited financial statements, available for all members to read at their leisure at any time, has not found anything awry with the Association’s finances.

This is not to say that the Association does not face financial challenges. With approximately 8,700 lot owners paying a yearly road maintenance fee of \$360, yet having to maintain and upkeep approximately 137 miles of roads in this very large subdivision covering approximately 10,000 acres, is a daunting task. A recent local news article reported that if the County took over the roads for another large subdivision in East Hawaii, it would assess over \$700 a month per lot owner. What appears to be very clear is that road maintenance is very costly, and will only get more costly over time.

V. THE GENERAL MANAGER

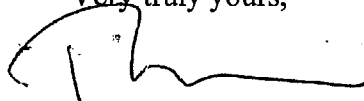
Social media and a few vocal member complaints have been made against the general manager, Don Morris. While I do not want to endorse any employee of the Association, I can say that in my many dealings with the general manager, that he is very knowledgeable on all aspects of the operations of the Association, that he is acutely aware of the By Laws and the need for compliance with it, that he is fastidious with recordkeeping, and that one of his main tasks of maintaining roads in the subdivision is constrained by lack of personnel and financial restrictions.

VI. CONCLUDING THOUGHTS

My purpose in writing this letter to the Board is to address many of the complaints and rumors put out by a few members and social media which has been brought to my attention. I am reminded by what Judge Peter K. Kubota said to the parties in the case filed in 2019 where he generally said to the parties to stop fighting about Association business. I suppose that is easier said than done since we still have another lawsuit filed by a few members against the Association, President Kawaaauhau, and the general manager.

This letter contains my view of the facts and law which I hope could provide some perspective on the complaints made in social media about the directors, the general manager, and the elections and its process.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Paul K. Hamano', written over a horizontal line.

Paul K. Hamano

PKH:bms