



KU' AU BAYVIEW ^{AT PA'IA} Homeowners' Association:

PO Box 792175 Paia, HI 96779

October 13, 2005

Tom and Amy Jenkins
52 N. Laelua Place
Paia, HI 96779

Dear Mr. and Mrs. Jenkins,

As a result of a recent comprehensive audit of Kuau Bayview at Paia Homeowners Association, a question arose regarding the propriety of an action taken by the Board of Directors in 2003.

The 2003 Board voted and recorded in the official minutes, copy enclosed, that the owners of KBV lots 43-49 could remove the Association-owned fence that marks Easement 19-the northern boundary of your properties along Hana Highway, "effectively reclaiming the 11 foot easement as part of their backyards."

As a result of the audit, the current Board sought a legal opinion regarding this matter, copy enclosed. Based upon that opinion, it is determined that the Board did not and does not have any right to make unilateral decisions regarding Easement 19 (landscaping). The presence of the easement as an Association asset in the Declaration, Code and Covenant Regulations (DCC&Rs) dictates that any change would require a two-thirds vote of all homeowners.

Furthermore, even if the Association did somehow vote to terminate its easement, the easements would still remain in favor of Maui Electric Company and GTE Hawaiian TelCom.

We appreciate the efforts you have made to improve this area. It is this Board's intention to earmark funds in our fiscal year 2006 budget for the landscape maintenance of the Hana Highway easement area. You will see definite improvements in the upkeep and "look" of the landscaping.

If you would like to discuss this matter, the easement landscaping will be discussed at our November board meeting, and we would appreciate your input at that time. The meeting is tentatively planned for Thursday, November 10, 2005 beginning at 6:30 pm at the Paia Community Center conference room. We are awaiting confirmation from the county that the facility is available that day. In the meantime, we request that you discontinue any improvements in the easement.

Sincerely,

STEPHAN L. BIELAWSKI
President
Kuau Bayview at Paia HOA

Enclosures

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August 25, 2005

Mr. Robert V. Pellettieri
Vice President/Treasurer
Ku'au Bay View at Paia
Homeowners Association
P.O. Box 792175
Paia, Hawaii 96779-2175

RE: Easement 19 for Landscaping Purposes

Dear Bob:

As a follow-up to my letter to you of April 7, 2005, you have asked whether the Association Board, through an action of the Board, could extinguish Easement 19 for landscaping purposes as shown on the project file plan no. 2181. You have informed me that within Easement 19 a rock wall was constructed by the project developer which is now maintained by the Association. Confirmation of Easement 19 and the rock wall being a part of the project improvements is set forth in the Declaration of Covenants, Conditions and Restrictions for Ku'au Bay View at Paia at item 3(c):

The Association shall be granted the following easements: (i) along the boundary of each lot in the subdivision fronting Hana Highway, for the purpose of maintaining, repairing and replacing the wall and fence to be constructed along Hana Highway by Declarant...

Accordingly, the developer contemplated the Association would be the holder of an easement in perpetuity (Easement 19) in which easement there would be constructed a wall to be maintained by the Association. Hence, all owners purchased their lots with the understanding that Easement 19 would exist and be a part of the Association's improvements and facilities. While an argument could be made that therefore one-hundred percent (100%) of the lot owners must agree to the termination of the Easement 19, at the very least, I believe to extinguish the easement would require an amendment to the Declaration which would require the approval of owners of at least two-thirds of the total lots.

Mr. Robert V. Pellettieri
Vice President/Treasurer
August 25, 2005
Page 2

In other words, I do not believe the Board has the unilateral right to terminate Easement 19; rather the approval of at least two-thirds of the lots, and perhaps all the lot owners, would be necessary to terminate Easement 19.

I trust the foregoing adequately responds to your inquires regarding Easement 19; however, if you require further input please let me know.

Very truly yours,



Robert E. Rowland

RER:kk

MINUTES OF BOARD OF DIRECTORS MEETING October 20, 2003

DIRECTORS PRESENT: Ann Pitcaithley (President), George-ann Kealoha (VP), Brian Ross (Secretary & acting Treasurer)
DIRECTORS ABSENT: Nida Goulding
OTHERS PRESENT: Darlene Brothers (bookkeeper), John Dunbar (Lot 61 manager), Mike Gibbons (Lot 26), Karen Chun (Lot 93)

CALL TO ORDER & DETERMINATION OF QUORUM

The President called the meeting to order at 7:30 pm at 43 S Laelua Place in Paia. With 3 of the 4 Directors present, a quorum was established for the conduct of Association business.

APPROVAL OF MINUTES

MOTION: To approve the Minutes of the Aug 4, 2003 Special Board Meeting as amended. Seconded and carried unanimously. (Pitcaithley/Ross)

FINANCIAL REPORT

The current bank balance is \$36,617.66 as compared to \$28,606.02 at this time last year. Expenditures are well below budget. There are 6 owners who are late with their fee payments. Total Accounts Receivable is \$360. The validation of the owner accounts against the actual deposit records is almost complete and several errors have been uncovered.

MOTION: To invoice or credit the individual owner accounts that are in error to ensure that all accounts are accurate by the end of 2003. A payment history from Dec 2001 to date will be provided for owner verification. The \$50 escrow error for Lot 17 will be written off as a bad debt as the owner moved away in Jan 03. Motion carried unanimously (Pitcaithley/Ross).

DESIGN REVIEW COMMITTEE REPORT

The President announced on behalf of Ms Haskins that 4 applications from Lots 22, 43, 63 and 84 had been approved. The Design Committee is comprised of Marion Haskins, Gail Burns, & Dave Dalgetty.

GRIEVANCE COMMITTEE REPORT

Ms Pitcaithley reported that there are 3 grievances currently being processed relating to vehicles parked on lawns, a dumpster, and neglected landscaping. Volunteers are needed to help on this Committee.

MOTION: To change the Board's previous policy of not acting on anonymous complaints, and to remove that notation from the Grievance Form. Anonymous complaints will now be accepted to encourage reporting of valid problems so that they can be resolved more quickly. Motion carried. (Pitcaithley/Ross, Kealoha opposed).

OLD BUSINESS

1 Easement along Hana Highway

MOTION: To grant the owners of Lots 43 to 49 the right to reclaim the 11 foot easement along Hana Hwy by moving their fences out to the rock wall. The Design Review Committee will oversee the aesthetic design of the area visible from Hana Hwy. Motion carried unanimously (Pitcaithley/Ross).

2 Water Bill

It was reported that water usage for the common areas is increasing, indicating that owners are once again tapping into the Association water lines.

MINUTES OF BOARD OF DIRECTORS SPECIAL MEETING

August 4, 2003

Page 2...

4 MOTION: Whereas Karen Chun (Lot 93) has threatened to sue if the Board does not provide her with a copy of the homeowners' address list, and whereas several owners have specifically requested that their address not be made available to this woman, in accordance with state law, the Board will require Ms Chun "to furnish the association with an affidavit stating that the homeowners' address list is requested in good faith for the protection of the interests of the association, its members, or both" (Statute 421J-7c) and will not be used for anything other than Association business. (Ross/Kealoha) All in favor.

5 Letter to Former Bookkeeper: A draft of the letter demanding the return of all unauthorized funds was presented and discussed. Suggestions were made regarding the wording. A revised version would be emailed to Board members when ready.

6 Lot 73 Areca Hedge: A grievance regarding some arecas that had grown to 12' and were blocking another owner's view was discussed. The Design Rules state that hedges-used-as-fences cannot exceed 6' in height. As there were other Lots in the view-line with arecas over 6', Lyn Wellner said she would talk to everyone involved and try to devise a solution.

7 Lot 50 Escrow Check: It was reported that Fidelity National would put a stop-payment on the \$195 escrow check made payable to the former bookkeeper, Lyn Erickson, which contained the owner's maintenance fee payment of \$95 and reissue it to Kuau Bayview as soon as they could determine if it had been cashed. The Postmaster in Makawao indicated that the check had been forwarded to the bookkeeper's home address in early June after she had put a forwarding request on the Association PO Box. There was concern about what other mail was being diverted from the Association.

8 Easement along Hana Hwy: Ms Brothers proposed that the owners of Lots 43-49 be allowed to move their fences out to the rock wall along Hana Hwy effectively reclaiming the 11' easement as part of their back yards. This would provide an ongoing benefit to these owners while reducing the liability to the Association, improving an eyesore, and reducing the area the Association is responsible for landscaping & watering. The owners would have to receive Design Committee approval of the landscaping that would be visible from Hana Hwy.

ADJOURNMENT

As there was no further business, it was moved by Brian Ross and seconded by Lynn Wellner to adjourn the meeting at 9:30pm. Carried unanimously.

NEXT BOARD MEETING

The next meeting will be held on August 11th, 2003 at 7:30 pm at 43 S Laelua Place in Paia.

Minutes prepared by:
/s/ George-ann Kealoha
George-ann Kealoha, VP

Approved by:
/s/ Ann Pitcaithley
Ann Pitcaithley, President

Date: August 10, 2003