

MINUTES OF KUAU BAYVIEW BOARD OF DIRECTORS EMERGENCY MEETING

March 27, 2019

DIRECTORS PRESENT: Chris Fortescue (Pres), Tom Atkins (Treasurer), Bonnie McCrystal (Sec)

DIRECTORS ABSENT: Shems Heartwell (VP), Sydney Schneider (Director)

OTHERS PRESENT: Darlene Brothers (HOA Manager)

REASON FOR THE MEETING: This was more of a Grievance/Design Committee meeting than a Board meeting. On Feb 20, 2019, the Design Committee received a formal complaint from the Ewings of Lot 28 regarding flooding apparently caused by David Ingram of Lot 27 having erected a cinder block retaining wall with hoses draining water from Lot 27 into Lot 28. Design Committee members went immediately to inspect and were alarmed to discover multiple unapproved alterations to Lot 27 and the area overrun with feral chickens. The Ewings were concerned enough that Shawn flew from California to Maui to inspect the damage. Shawn met with David and tried to get him to install a French drain to divert water toward the Retention Basin rather than into Lot 28, but David insisted the flooding was caused by runoff from Shawn's roof and gutters. David did remove the hoses and plugged the holes with cement, but Shawn filed an RFS which brought County inspectors to the site. Then on April 1, 2019 we received a complaint from Robert Lindan of Lot 31 regarding feral chickens having destroyed his landscaping on Hoe St for the second time.

CALL TO ORDER & DETERMINATION OF QUORUM:

President Chris Fortescue called the meeting to order at 5:00 pm at Makana Park mauka of Kuau Bayview in Paia. With 3 of the 5 Directors present, a quorum was established for the conduct of Association business.

It was acknowledged that this was an emergency meeting called solely to deal with the crisis situation that had developed pertaining to DCCR and County violations by David Ingram of Lot 27 which were adversely affecting other owners. There was insufficient time to notice the neighborhood plus it was primarily a private matter between two owners. The Board has a duty to uphold the best interests of the Association as a whole first and foremost in all decisions, but at the same time we wanted to minimize the financial impact the County could have on Lot 27. Each of the Board & Design Committee members had familiarized themselves with the facts and discussed the situation at length prior to the meeting and were coming together as a formality to plan a course of action. It was decided to send the Ingrams an official Board letter requesting their cooperation in taking certain steps to resolve the problems as follows:

1. **Drainage:** A French Drain (or whatever the County agrees is the best solution) needs to be professionally installed on Lot 27. None of the cost should fall on Lot 28.
2. **Construction:** The new deck needs to be cut back 6 feet and the supports moved out of the north and east setbacks. We have no problem with your gazebo or the height of the fences (nor does Shawn); however, you need to be aware that, if the County shows up, they will insist on after-the-fact permits for both fences (over 7 feet) and County codes require architect-stamped plans for any retaining walls over 3 feet.
3. **SMA:** The County also demands [SMA assessments](#) for both the drainage alterations and all construction because Kuau Bayview is in a Special Management Area. Here is the [SMA application form](#).
4. **Chickens:** We need to establish and enforce a policy of "NO chickens in Kuau Bayview." None of the 92 lots is large enough to accommodate a chicken coop which by law must be at least 20 feet from any dwelling and not in a setback. We have implemented a plan to relocate the chickens to egg farms upcountry. Two traps were purchased for the HOA and trapping has begun.
5. **Gate:** We need to enforce the existing policy of "No access to the Retention Basin other than via the main gate." Under the HOA insurance policy, only one locked gate is allowed. Once the chickens are all out of the basin, the fence will be closed off permanently.
6. Please submit to the Design Committee proper applications & the marked plot plan showing the corrected alterations so that we can get everything back on track and scheduled for approval.

All Board members and Design Committee members agreed with these decisions except for Chris Fortescue who felt that we should postpone removing the gate and put Dave on probation so as not to pile on too much bad news at once. As Chris does not live on Maui and no one here wanted to have to monitor Dave's behavior or have to revisit this problem in the future, the majority vote was to remove the gate as soon as the chickens were gone. Resolving this crisis took up an inordinate amount of everyone's time and both Chris and Shawn had to fly from the mainland solely to address these issues. All of this could have been avoided if Dave Ingram had simply submitted applications to the Design Committee prior to making alterations to his lot as is required by the DCCRs.

ADJOURNMENT Motion to adjourn the meeting at 5:30 pm. Carried unanimously (Atkins / Brothers).

Minutes prepared by:

/s/ Darlene Brothers

Darlene Brothers, HOA Manager

Approved by:

/s/ Tom Atkins

Tom Atkins, Treasurer

Date: March 29, 2019

AFTERMATH

As it turned out, removing the hoses and plugging the drainage holes with cement was sufficient to solve the drainage problem for Lot 28, so no French drain was required after all. Many of the chickens were relocated to an egg farm in Pukalani, and the rest were removed by Dave himself. Thankfully, there is no longer a chicken problem. County Inspector Gail Davis visited Lot 27 and informed Dave Ingram what he would have to do to bring his lot into compliance with after-the-fact permits and SMA applications. Dave did cut back the deck but did not remove the supports from the setback. Gail sent reminders on May 31 and June 10 and came a few times to inspect. On Oct 15, 2019, Gail sent a warning letter and gave Dave until the end of the month to submit his assessments to avoid further enforcement. Dave did nothing. He also failed to submit proper applications to the Design Committee. In May 2020 it is believed that Dave received hefty fines from the County. This result is exactly what the Board had tried to avoid.