

MINUTES of the 2023 KUAU BAYVIEW ANNUAL MEMBERSHIP MEETING
November 30, 2023

2 DIRECTORS PRESENT: Darlene Aaron Brothers (President), Tom Atkins (Secretary)

1 DIRECTOR ABSENT: Samantha Spurgeon (Treasurer)

2 OWNERS PRESENT IN PERSON: 7, 55

11 LOT OWNERS PRESENT VIA GOOGLE MEET: 5, 7, 10, 15, 45 (2), 54, 55, 62, 63, 64

INTRODUCTIONS

President Darlene Brothers introduced Secretary Tom Atkins and explained that Treasurer Samantha Spurgeon was in Europe. New owners since the last meeting (Lots 43, 61) were not present.

DETERMINATION OF QUORUM & CALL TO ORDER

The requirement for a quorum was met with 61 of the 92 Lots (66%) represented, 11 in person or via Google Meet and 50 by proxy. Proxies are negated for owners who attend the meeting.

President Darlene Brothers called the 27th Annual Membership Meeting of Kuau Bayview HOA to order on Thursday, November 30th, 2023 at 6:34 pm at 37 Kaiea Place in Paia. The President pointed out that Membership meetings are more formal as there are a number of mandatory agenda items that are required to satisfy state law pertaining to Kuau Bayview as a non-profit corporation. Also the topics covered are more general in that they affect the entire membership as opposed to specific issues between neighbors. At membership meetings, members can make motions and vote along with the Directors.

PROOF OF NOTICE OF MEETING

Secretary Tom Atkins confirmed that notice of this Annual Meeting was emailed to all Green List owners on Nov 9, 2023 with accompanying proxy. A paper notice was mailed to the three snail mail owners the next day. A copy of this notice is appended below.

APPROVAL OF MINUTES OF 2022 ANNUAL MEETING

MOTION: To approve the minutes of the Annual Meeting dated December 1, 2022, as circulated. Seconded and carried unanimously (Georgeann Kealoha / Linda Thomas).

2023 ANNUAL PRESIDENT'S REPORT [see below and also on website under the Meetings menu at <https://www.kuaubayviewmaui.com/php/annual-report-2023.php>]

FINANCIAL REPORT for 2023

We are still in very good shape financially. Cash assets of the HOA as of Nov 30 total \$89,122.36 which is amazing considering we reduced the revenue for 2023 and 2022 by giving \$2760 back to the owners each year and \$4600 in 2021. We will be giving another \$2760 back to the owners for 2024. The only unusual expenses this year were \$1064.31 for more Retention Basin fencing which will be installed in Dec, \$197.34 increase in the insurance premium over the past 2 years, \$329 excess water charge when the DIG timer malfunctioned, and a few supplies. We've applied to the Water Dept for a leak rebate. All owners are paid in full except two delinquent owners. Property values have risen rapidly. Two houses have sold so far in 2023 (Lots 43 & 61) and 2 more are for sale (Lots 1 & 47). All are over a \$Million dollars..

DESIGN COMMITTEE REPORT

This year brought our neighborhood a few new roofs, solar PV systems, and a large deck. Several owners were approved for additions but these don't seem to have been started yet. Approval was recently granted for a one-story house on S Laelua (Lot 59) to add a second story. A big relief for the Design Committee is that the 6'x 68' Lot 27 cinder block wall was finally veneered (by me!) and is now in compliance with the DCCRs.

Mahalo to all owners who are investing in their homes and taking such good care of their yards thereby increasing property values for everyone.

GRIEVANCE COMMITTEE REPORT

- There has been a ten-years-long ongoing complaint about an eyesore dog kennel at 16 Kaiea Pl (Lot 14). You may recall that this owner was given approval for a 6' gray privacy fence across the front yard contingent upon her enclosing or removing the kennel and landscaping to hide the fence. She did neither. Now that she is about to move to Kula and rent the property, the HOA is requiring her to move/remove the kennel. Fines have been levied.
- An owner complained [again] about a large Haole Koa tree at 47 N Laelua Pl (Lot 40) dropping seed pods into his property. The Lot 40 owner was asked a year ago to remove the Haole Koa but only trimmed the top. Aaron cut down the tree, cut it up, and Tim Lambert took the large trunks to the green waste dump. End of problem. Tim also took a load to the dump when Tom trimmed the Autograph tree branches that were bothering Lot 42. Thank you, Tim!
- There were 2 complaints about a leaking solar panel at 4 N Laelua Pl. The concern was about wasting water in a drought. It has since been repaired.
- There have been several complaints over the years about the eyesore at Paia Community Center where the County seems to be storing trash bins on the land KB gave them for "park & playground purposes." Using Lot 25 as a baseyard for trash collection does not comply with the conditions of the land grant. There are other even worse issues related to the use of Lot 25 that I address with the County in an open letter on the website at: <https://www.kuaubayviewmaui.com/php/lot-25.php>
- There have been quite a few complaints about homeless people parking on the streets in Kuau Bayview, which no one wants. Various efforts have been made to discourage this, but MPD says it is legal for anyone to park on County streets as long as they do not sleep in the vehicle. The large white van (license LKZ 946), is owned by Kai who has been doing yard work for Jeff Lackey. He is a carpenter, a hard worker, is quite articulate, and non-threatening. He considers Lae St a safe place to park close to his girlfriend who lives next to the Zen temple.
- Some owners near the top of KB have complained about their houses being filled with dust when Kulolio Ranch bulldozes the firebreak. The manager, Brian Carvalho, has agreed to text me any time they plan to do dust-generating activities so I can warn the affected owners to close their windows.
- Fireworks were illegally set off at the PCC on the evening of Nov 18/23 accompanied by those loud booms again. They sound like pipe bombs and are very alarming.
- There have been several complaints about the 6 Hoe Pl (Lot 29) dogs barking every time someone walks along Lae St, especially if they have a dog. I also have a complaint about Cynthia creating a hostile work environment for me when I have to work behind the houses in the Retention Basin. Even though I don't make any noise, CJ encourages the dogs to bark at me and never fails to accost me with f-bombs and other obscenities. This is unacceptable behavior in an owner, especially toward a volunteer working for the good of the community.

RETENTION BASIN & LANDSCAPING REPORT

The two front entrance gardens have undergone a major aesthetic redesign and replanting as has the Agave inset toward the Paia Community Center. I've added some lights to cheer things up but they seem to not come on consistently. We had to remove one of the Fan Palms near the KB sign as it had grown too tall to maintain. We may replace it with a Manila Palm. The Hau Bush that I planted last year in the Hana Strip did so well I ended up digging it out by the roots last July as it was getting too big. I think it looks better with only Bestill along Hana Hwy. I have been weeding along Hana Hwy east of Lae St and hope to have the overgrowth behind Lots 47-48 completed this week. I have made great progress chopping Haole Koa out by the roots in the Retention Basin. Much vegetation close to the top of the slope behind Lots 27 & 28 has been removed to create a firebreak. Soon it will be replaced with Bestill, Agaves, and groundcover to stabilize the slopes. Tom has joined me in my mission to eliminate Haole Koa from the Retention Basin. This is a fire prevention measure as HK is extremely flammable and burning seed pods can carry embers in the wind. I created a Maui Wildfire Risk Mitigation page on the website so everyone can learn how to play their part in protecting Kuau Bayview from wildfires. Kulolio Ranch has bulldozed a firebreak in the fields surrounding Kuau Bayview which has caused some dust but is for our own protection.

SECURITY REPORT

Crime-wise 2023 has been an improvement over 2022. The increased number of cameras is helping. On Dec 19/22 an unlocked \$100K truck was stolen from the driveway at 24 N Laelua Pl (Lot 50). The thieves were caught on video and we have reason to believe it was someone from Skill Village. In August a vehicle in the driveway at 4 N Laelua (Lot 53) had its gas tank siphoned. On Nov 9/23 at 9am a homeless man with face tattoos was caught climbing the fences from the park into the Ranch property behind Lot 7. I made him go back into the park.

ELECTION OF DIRECTORS

As there was one candidate for one Director position, the election was by acclamation. We welcome Tom Atkins (Lot 55) to 2 more years of service on the Board.

OLD BUSINESS

- We are still trying to get the County to address the tripping hazards caused by tree roots lifting the cement sidewalk panels next to Lots 15, 29, 70, and 86.
- **PCC Fence:** We are also trying to get the County to build their own fence along the PCC side of the Retention Basin. The planned repair last Dec 23rd had to be cancelled when the Dec 19 storm snapped off two more fence posts and we discovered that all the posts need to be replaced due to corrosion caused by the County pushing soil against the fence over the years. No point in adding new mesh to bad posts. The fence repair men say it is impossible to work on the steep slope and Parks refuses to let us install the fence at the top of the hill on the land Kuau Bayview gave them. I am preparing a Lot 25 page to present evidence as to why that fence should be installed and maintained by the County going forward rather than Kuau Bayview..

NEW BUSINESS

- 1) **MOTION:** A \$30 Christmas Bonus will be given to owners in 2024 by keeping the fees at \$100 for another year for all owners who are in good standing with the HOA. It is indeterminate at this point whether the County will be paying for the fence repair along the west side of the Retention Basin. We will be deliberately running in the red slightly for 2024 to reduce the bank balance a bit because we have more money than we need thanks to Tom and myself doing most of the work for free. Better the owners have it than anyone else. (Erik Rogind / Georgeann Kealoha). All in favor.
- 2) There were no Board actions in 2023 that required a vote so nothing to ratify.
- 3) **Retention Basin Fencing Repair:** In mid December, the chain link fabric we purchased for the PCC section will be used instead behind Lots 28 & 29 and in the utility box area.
- 4) **Google Meet:** As Verizon retired the Blue Jeans software we had intended to use for this meeting, we tried Google Meet instead. It is free and has a 60 minute limit. We found it much better than Zoom. We are very happy to have finally found free meeting software that works so well.

OWNERS' FORUM

- Erik Rogind (Lot 15) inquired about what could be done about the sidewalk tripping hazards. Darlene spoke with Public Works Arborist Timothy Griffith who promised to come next week to assess the problem areas. He will submit a work order to the Makawao Highways Division. Possible solutions are grinding the cement or lifting the cement panel then trimming the tree roots and replacing the cement.

ADJOURNMENT: The meeting was adjourned at 7:51pm. (Erik Rogind / Tom Atkins).

2023 ANNUAL PRESIDENT'S REPORT

As you may recall, we had scheduled for the fence on the PCC side of the RB fence to be repaired last Dec 23rd but a storm on Dec 19th revealed that all the fence posts along that boundary were corroded and ready to snap off. Having to dig new holes and install new posts on that steep slope made the repair pretty much impossible. I met separately with two Parks representatives and got nowhere. While investigating the situation, I learned that the post damage had been caused by DPW burying the posts and also that all the storm water from the Paia Community Center, the Hawaiian Church, and all of Paia Halelani Subdivision drains into our Retention Basin! Tom & I had always wondered where that 30" culvert led. According to our calculations, KB has 21.1593 acres of land draining into the RB while PCC et al has 17.9247 acres draining into our RB. Kuau Bayview owns the RB and is 100% responsible for maintaining & insuring it. The only function of the RB is to receive all storm water discharge from the 92 lots in KB, or so we thought. We had no say in the matter and we were not even informed that another area only slightly smaller than KB also utilizes our Retention Basin.

"The Association shall be obligated to accept any property... which is conveyed or transferred to it, whether as a Common Area or otherwise, by Declarant [A&B]..." and "shall be solely responsible for the care, maintenance and preservation of the Common Areas... the Common Areas must be conveyed to the Association free and clear of all encumbrances..." [DCCR 3(a)].

In the Retention Basin Deed on page 1 it explicitly states that "said Property is **free and clear of and from all liens and encumbrances...**" and there is no mention, reference, and/or stated condition or encumbrance in either the body of the Deed or in Exhibit A indicating that Kuau Bayview will be forever responsible for any and all repercussions resulting from point-source discharge of storm water from the Paia Community Center, Lot 25, Paia Halelani subdivision, the Hawaiian Protestant Church, and adjacent properties. This seems to me to be a rather large encumbrance and shocking omission. There is also no mention of such encumbrance in any of the individual deeds for the 92 Kuau Bayview Lots. In the 2004-04-13 letter from Corp Counsel to the Association, Corp Counsel points out that "**Each subdivider shall convey the land to the County by warranty deed free and clear of all liens and encumbrances.**" Lot 25 was indeed conveyed free of encumbrances to the County but did the County in return build a hidden encumbrance into the deeding of the Retention Basin Parcel to Kuau Bayview?

"...the Association shall periodically pump and clean the retention basin located at the intersection of Lae Street and Hana Highway **to prevent overflows**, remove silt therefrom, inspect and maintain the basin, and keep it free of debris." [DCCR 3(a)]

The KB annual dues pay for maintenance and liability insurance for the RB. If it overflows, we are 100% liable. Considering close to half of the stormwater that flows into the RB comes from properties that pay nothing and share zero liability, this seems like an encumbrance to me. There was nothing in our sales agreements that required our acceptance of liability for the Paia Community Center or the Halelani Subdivision. Neither A&B nor the County informed us that all KB owners would be liable for the possible irresponsible behavior of another subdivision. Why are they exempt from contributing to the cost of dredging the basin if they happen to be the source of the toxic substance? Even though Parks installed the end of their fence on HOA land, they refuse to let us install our fence at the top of the hill on land we gave them. Considering Kuau Bayview is footing 100% of the bill for their use of our Retention Basin, the least they can do is install a 6' chain link fence along their edge of the basin.

Retention Basin Fence: The Retention Basin fence is by far the most expensive asset which the HOA must maintain. Every Board since 1996 has always anticipated that one day we would have to replace the entire 1020 feet of fencing at once. This would be an expenditure of tens of thousands of dollars. But this is not the most efficacious way. Some sections of the fence are in very good shape while others are falling apart. The original fence is 11 gauge vinyl-coated steel. Eighty feet of chain link behind Lot 27 was replaced on Oct 9/22 with 9 gauge (thicker than 11 gauge) hot-dip zinc-coated galvanized steel. This will be much stronger and last longer. The 9 gauge fabric will eventually replace the fence around the entire RB. The 120' of chain link fabric purchased for the PCC section will be used behind Lots 28 & 29 while I try to create a flat area along the PCC slope so the fence workers have a place to stand as they cannot work on such a steep slope.

**2023 KUAU BAYVIEW ANNUAL MEMBERSHIP MEETING
MINUTES OF BOARD OF DIRECTORS ORGANIZATIONAL MEETING
Nov 30, 2023**

DIRECTORS PRESENT: Darlene Brothers, Tom Atkins

DIRECTORS ABSENT: Samantha Spurgeon

The purpose of the Kuau Bayview at Paia Homeowners' Association domestic non-profit corporation is to provide for the management, maintenance, landscaping, protection, preservation, aesthetic and architectural control and development of the subdivision.

The Board of Directors met following the 2023 Annual Meeting at 7:52 pm and organized as follows:

President: Darlene Brothers

Secretary: Tom Atkins

Treasurer: Samantha Spurgeon

In the capacity stated above and on behalf of the named entity, I certify that the statements and representations made herein as indicated above are true and correct.

/s/ Tom Atkins

Tom Atkins
Secretary
Kuau Bayview at Paia HOA

**Notice of 2023 Annual Meeting
Kuau Bayview at Paia Homeowners' Association**

In accordance with Article III, Section 3(c) of the Association Bylaws, NOTICE IS HEREBY GIVEN that the 2023 Annual Meeting of the Ku'au Bayview at Paia Homeowners' Association will be held **Thursday, November 30, 2023 at 6:30 pm** via Google Meet. This will be a purely virtual meeting. **Registration will begin at 6:20 pm.** The invitation to the Google Meet meeting will be emailed to owners on Nov 30th with instructions on how to attend.

The purpose of this meeting is as follows:

1. To receive the annual [reports of Officers, Directors, and Committees](#) of the Association; please read these reports which are posted on the website under the Meetings tab prior to the meeting.
2. To elect one Director to fill the term expiration of Tom Atkins (Lot 55). Tom is running for re-election. If there are other nominations received by Nov 23rd, they will be added to the ballot.
3. To transact other such business as may properly come before the meeting or any adjournment thereof.

In order to conduct the business of the Association, there must be a quorum. Owners representing more than fifty percent (50%) of the total authorized votes (92) must be present either in person or by proxy. In other words, at least 47 Lots must be represented. PLEASE SUBMIT YOUR PROXY EVEN IF YOU PLAN TO ATTEND to ensure the meeting can take place. If you attend, your proxy will be negated. We are once again offering [on-line proxy submission](#) to make the process less time consuming for all.

If you would like to run for the Board, please submit a nomination form. If you are interested in serving on the Design Committee or the Grievance Committee, please contact the Board prior to the meeting, or at the meeting.

There will be a short organizational meeting of the Board of Directors immediately following the membership meeting for the purpose of electing officers for the coming year.

Dated: Nov 3, 2023

By call of: Tom Atkins, Secretary

Agenda for Nov 30, 2023 Annual Homeowners' Meeting

1. Introductions of Directors & New Owners
2. Determination of Quorum & Call to Order
3. Proof of Notice of Meeting
4. Approval of Minutes of 2022 Annual Meeting
5. Annual HOA Status Report
6. Financial Report
7. Design Committee Report
8. Grievance Committee Report
9. Landscape & Retention Basin Report
10. Security Network/Crime Report
11. Election of one Director
12. Old Business
13. New Business
14. Owners' Forum
15. Adjournment
16. Organizational Meeting of Board of Directors

The complete 2023 Annual Meeting packet is available on the [Kuau Bayview website](#).