

DRAFT
ASSOCIATION OF HOMEOWNERS
KU'AU BAYVIEW
BOARD OF DIRECTORS MEETING
September 12, 2001

DIRECTORS PRESENT: Don Varni, President, Karen Chun, Secretary;
Mike Gibbons, Treasurer;
Directors: Lisa Daly, Jennifer Maskrey.

DIRECTORS ABSENT: Ann Pitcaithley. (Note: Ms. Pitcaithley arrived later)
Tanya Gooseby (excused)

OTHERS PRESENT: About 10 homeowners, Cindy Mendes of Oihana Property
Management

CALL TO ORDER:

Don Varni called the Board of Directors Meeting to order on Wednesday, September 12, 2001 at 6:30pm. A quorum was established with five of the seven directors present.

APPROVAL OF MINUTES:

MOTION: To approve the minutes of the Board Meeting dated August 1, 2001.

VOTE: Carried unanimously

TREASURER'S REPORT

The Treasurer reported that in response to the President's request to estimate the Association's financial position at the end of the year, he had run two scenarios. In one scenario which the Treasurer considered to be conservative, he assumed that for the rest of the year all expenses would come in at their budgeted amounts. He explained that this was conservative since some expenses had been running under budget for the year. In this scenario the AOH would be \$452 in the red, after paying the unexpected siding legal bill. The Treasurer noted that this bill had been paid out of the general checking fund.

The optimistic scenario assumed that expenses would continue as they had for the first part of the year. In this case the AOH would have excess, unspent funds of \$1955 even after paying the legal bill.

The Treasurer advised that he felt that the actual case would fall somewhere between these two numbers.

The Treasurer then explained that there are two reserve funds. One which has approximately \$8000 in it is for the chain link fence, irrigation system and irrigation timers. We are required by law to replace any funds taken from it via special assessment within six months. No funds were, in fact, taken from it.

The second reserve fund was established by the Board in case we ever needed to dig out soil from the retention basin. In that case, we might have to dispose of the soil as hazardous waste (due to the runoff of oil dripping from cars, etc.). The Board may use money from this fund at its discretion since it was established by the Board and withdrawals are not regulated by law. No money was borrowed from this fund either.

The Board decided there was no immediate need to take action and that we would wait until the regularly scheduled budget meeting when the financial picture would be clearer.

STATEMENT BY JOY YANAGIDA

Ms. Yanagida, who is employed as the AOA's attorney for various matters and who was retained to do the preliminary siding investigation on an hourly basis of \$165/hr for 30 hours of work which ended April 2001. She stated the following:

When her firm began the investigation the Board did not know:

- How many homes were showing damage
- What face and kind of damage was showing

- The level of homeowner concern
- How much money was at stake for each home
- The status of the litigation nationwide and in Hawai'i (there were class actions pending for Masonite, Weyerhaeuser, Stimson/Forrestex, as well as Louisiana-Pacific for its siding product).

Work done included:

- Issued a survey and sought to quantify any damages.
- Retained an expert, a local contractor, Ben Despina, to make a site visit, give an opinion on cause of damage, and estimate remedial construction costs (His preliminary view was that a defective product was responsible for the damage suffered by some houses and costs could be between \$40,000 and \$60,000)
- Based on his estimate, costs to repair could be up to \$5.5million if all houses cost the maximum.)
- Investigating the status of class actions as applied to Ku'au Bayview

Ms. Yanagida also noted that during this time, Forrestex planned to send its representative to visit four houses in the subdivision - without announcing its visit to any of the homeowners save one. She stated she offered to send someone to monitor O'Connell's visit and that the siding committee declined, to save costs.

On March 29, 2001, the hearing on class certification for Forrestex was held on the mainland. Ms. Yanagida advised that the homeowners with Forrestex siding would soon have to elect whether to join the class action or go it alone.

EXECUTIVE SESSION:

The Board adjourned into Executive Session at the request of Joy Yanagida who wished to speak to the board on a litigation issue other than the siding. Ms. Yanagida indicated (in the presence of Ms. Pitcaithly), that if she and Ms. Brothers would make their comments on her performance to her directly she would rebut their accusations but noted that until this meeting neither had approached her with questions or complaints regarding her performance despite communicating them to others.

COMMITTEE REPORTS:

a. Parking

Ms. Chun appealed for homeowners to submit draft rules.

b. Website

Mr. Gibbons indicated the Homeowner website was available to everyone. Mr. Gibbons asked whether Ms. Brothers was maintaining a website as Mr. Winer, the attorney who may represent homeowners on the siding, had indicated that he had obtained information from it. Ms. Brothers indicated that access to the website was restricted to her friends. Ms. Brothers stated that she is using the website to provide A&B information on the siding issue. The Secretary requested that Ms. Brothers copy the information on the siding to the Board. Ms. Brothers refused.

c. Siding:

Ms Pitcaithly indicated that Mr. Winer, the attorney, wanted to discuss a contingency agreement with homeowners. Mr. Gibbons advocated that we pursue two parallel tracks: recommend to homeowners that we should commence talks with Mr Winer as a first step to considering litigation and also make a formal notification to A&B that serious problems exist. Although the siding sub-committee has been in existence almost a year, this approach had not been considered previously. He indicated that in talks with Jeff Faulkner, A&B has indicated a willingness to talk about solving the siding issue. Mr. Gibbons felt that we should get legal advice about our talks with A&B so as not to damage litigation, if talks were unsuccessful. He expressed concern about Ms. Brothers sharing information developed by the siding committee under the auspices of the Board without coordinating with the Board and with an attorney.

MOTION: To follow a two pronged approach to the siding problem by

1) recommending that homeowners meet with Mr. Winer at no obligation to hear his proposal for contingency litigation and

2) to approach A&B, with legal advice, if prudent, about the possibility of A&B fixing the problem without legal action.

(Chun/Maskrey)

AMENDMENT: To delete the lawyers name from the motion.

Chun/Maskrey.

Withdrawn.

VOTE: Carried Unanimously

Linda Smagac advised the Board to let Mr. Winer know of our second approach. Tod McFarlane advised that the approach to A&B should be unemotional and suggested that those whose emotions are running high should not be chosen for the committee. Mr. McFarland agreed to serve at the President's request. Ms. Smagac also agreed. Several homeowners suggested that Ms. Brothers and Ms. Pitcaithly serve since they had done most of the work. Ms. Chun pointed out that neither was unemotional and suggested that they serve in an advisory capacity only.

MOTION: Appoint Tod Mcfarlane, Linda Smagac, Don Varni, Ann Pitcaithly, and Darlene Brothers to the siding committee. (Daly/Maskrey)

VOTE: Motion Passed 5 to 1. (Aye: Varni, Pitcaithly, Gibbons, Maskrey, Daly. Nay: Chun)

OLD BUSINESS:

a. Vacation Rental DCC&R Amendment. Ms. Chun reported the amendment died due to lack of homeowner votes (for or against).

b. Street Lights. Ms. Brothers reported that the County had agreed to install flat lenses and that she is working with Maui Electric to get it done.

NEW BUSINESS:

a. Treasurer's Report Recommendations.

The section requiring project manager approval for each invoice over \$500 was changed to allow for recurring expenses to be paid by the Managing Agent provided they are close to their budgeted amount.

MOTION: To Approve Recommendations in Treasurers Report as resubmitted. (Chun/Daly)

AMENDMENT: To drop section 1.2 requiring homeowners to sign agreement before accessing certain AOH data (Chun) Died for lack of second.

VOTE: Passed 5 to 1. (Aye: Chun, Gibbons, Varni, Daly, Maskray. Nay: Pitcaithly)

b. Resolution to Strengthen Financial Controls:

The section requiring professional qualifications of contractors was amended to omit reference to the Chamber of Commerce.

MOTION: General Resolution to Strengthen Financial Controls (as revised)

VOTE: Passed unanimously

c. Siding letter to homeowners.

Taken care of by siding committee.

d. Bylaws and DCC&RS.

MOTION: To Create a Committee to revise Bylaws and DCC&RS (Chun/Maskrey)

VOTE: Passed unanimously

Ms. Maskrey was asked head this and to choose a committee from homeowners.

e. Managing Agent:

MOTION: To Create a Committee to Recommend the Next Managing Agent (Maskrey/Daly)

VOTE: Passed unanimously

Ms. Maskrey will chair the meeting and choose committee members.

f. Lot 59 fence.

The President negotiated a solution agreeable to both Ms. Pitcaithly and Mr. Rebelo. The Secretary reminded the board that any letter that goes out on AOH letterhead is a board matter.

g. Repay Karen Chun \$10 for room rental for this meeting

Plea for Unity:

The President made a plea for unity amongst the homeowners and asked those involved in acrimony to let the past go. He pointed out that dissention would make it more difficult to resolve the siding issue.

MOTION: To Adjourn

VOTE: Passed unanimously

The President adjourned the meeting at 8:46pm.

Attachments: Recommendations in Treasurers Report (revised and accepted)
General Resolution to Strengthen Financial Controls (revised and passed)

Minutes prepared by:
Karen Chun
Secretary

RECOMMEDATIONS FROM TREASURER'S REPORT

Financial Recommendations

1. The Board should make Homeowners aware of their rights to view the accounts, the procedure to follow to gain access to them, and the limitations on what they can see. For example, delinquents for less than 90 days are not available to homeowners. Equally, Directors and Oihana should be aware of what their responsibilities are in disclosing details of the accounts to homeowners.
2. I am an advocate of the freedom of information, nevertheless, to prevent the further circulation of misleading or unfounded allegations, I reluctantly recommend that before giving a homeowner access to the accounts, the homeowner should be asked to sign an affidavit that they are acting in good faith. This is permitted under Chapter 421J-7, Hawaii Revised Statutes(3). If permitted under the Statutes, then I further reluctantly recommend that the homeowner be required to bring any charges of mismanagement or misconduct initially to the Board for consideration. If the Board rejects the charges after due consideration and the homeowner still considers there was wrongdoing, then the homeowner may take whatever action they consider appropriate. Unfortunately, I see no other way to prevent any Homeowner from bringing unfounded allegations in the future and further agitating homeowners and wasting the Board's time.
3. Homeowners should be asked to bring their concerns to the Board if they suspect any irregularity, misconduct or unresponsiveness by the Managing Agent. This will allow the Board to exercise the responsibilities delegated to it by homeowners in an orderly fashion.
4. The contract with Oihana does not specifically provide for the charging of Supplies and Equipment. The contract should be renegotiated to specifically include/exclude these charges and if included, a scale of charges should be attached to the contract (we were provided a scale of charges on our visit).
5. Although no unauthorized payments from Association funds were found, I recommend that controls over the authorization and payment of invoices be improved. I am presenting a separate motion for immediate action on this point.
6. Create a separate G/L account for fines. This has already been implemented in the June accounts as "Violations".
7. In the short term, communicate the expectations the Board has of Oihana, obtain Oihana's agreement as to the remedies they will implement and then monitor progress, communicating any unsatisfactory performance immediately it occurs.
8. In the longer term, prepare a Request for Proposal for managing the property and obtain bids from at least three property management companies and Oihana. I understand there is a group of homeowners in favor of self-management; they should be invited to submit a proposal also, and this proposal should be evaluated against the same criteria as the other proposals.

Recommendations for improving Communications and Record Keeping

Ms. Chun makes these recommendations with my support.

1. Advise homeowners contacting Oihana to be sure to leave their name, lot number, development (Ku'au Bayview), and phone number.
2. Advise homeowners that if they have not heard back from Oihana within 36 hours, they should contact Karen Chun who will follow up with Oihana.
3. Monitor Oihana's progress in implementing the improvements promised.
4. Examine ways to improve the process by which Oihana is made aware of home transfers.

5. To reduce copying and postage costs, ask homeowners if they are willing to receive official correspondence from the Board or Oihana by email. Only send hard copy to those who decline or who are not available by email.

General Resolution to Strengthen Financial Controls

Motion by Mr. Gibbons to improve financial controls: that a General Resolution (Association By-Laws Article VI, Section 1) be adopted to strengthen financial controls as follows

1. Entering into Contracts

1.1. Any contract that commits the Association to recurring or ongoing fees or expenses must be ratified by the Board before signature. If necessary a special meeting of the Board shall be called to ratify such a contract. This shall be known as a "Board Managed Contract". Because of the potential for significant fees to accumulate under this kind of contract, they should only be entered into when the nature of the work contracted for is clearly defined and recurring or ongoing in nature.

1.2. Any contract that commits the Association to non-recurring fees or expenses greater than \$500 must be ratified by the Board before signature. If necessary a special meeting of the Board shall be called to ratify such a contract. This shall also be known as a "Board Managed Contract". This is the preferred type of contract because the exposure of the Association is clearly limited to the value of the contract.

1.3. In the rare case that a contract of value less than \$500 is entered into before a formal meeting of the Board to record approval, it must be ratified by the Board at the very next Board meeting after the contract is signed.

1.4. Contractors shall be licensed or hold a professional qualification.

1.5. Normal utilities contracts (electricity, water, etc.) are excluded from these requirements.

1.6. No contract may be entered into which gives a benefit to one director over and above the benefit to all directors and homeowners.

1.7. Directors must disclose any conflict of interest prior to a vote to enter into a contract. A Director must not vote on any contract on which they have a conflict of interest.

1.8 For recurring contracts, or contracts that can occur ongoing fees, the Board will establish a monthly budget at the time the contract is entered into.

2. Contract Management

2.1. Each Board Managed Contract must be assigned a contract manager who is a Board member. The function of the contract manager is to ensure all fees and expenses incurred on the project are in accordance with the contract. To ensure segregation of duties, the Treasurer may never be appointed as a contract manager.

2.2. The Board may also appoint a project manager. The function of the project manager is to oversee the quality of the work performed by the contractor and be a point of contact for the contractor. The project manager may be an ex-officio homeowner. If no project manager is appointed, then the contract manager automatically becomes the project manager.

2.3. Invoices incurred under the contract will be forwarded to the contract manager. If a separate project manager

was appointed, then the contract manager will consult with the project manager before authorizing payment. If there are disputes as to the amount or quality of work performed for the invoice rendered, then the contract manager will resolve this dispute with the contractor before authorizing payment.

3. Payments for Board Managed Contracts

3.1. If the managing agent receives invoices directly from a contractor for a Board Managed Contract, the managing agent will forward that invoice to the contract manager for approval, except as provided for in 3.4.

3.2. After review by the contract manager as described in 2.3 above, the contract manager will date and sign the invoice as "Approved to Pay" and forward the invoice to the managing agent for payment.

3.3. The managing agent will not pay invoices on a Board Managed Contract without the approval of the contract manager being noted on the invoice.

3.4. Where a monthly budget has been established for a recurring contract, invoices may be paid by the managing agent without referral to the contract manager, provided the year-to-date budgeted figure for that contract will not be exceeded. Otherwise the invoice must be processed as in 2.3.

4. Oversight Responsibility

4.1. The Board has responsibility for ensuring the procedures for entering into contracts are followed.

4.2. The Treasurer has responsibility for ensuring the contract management and payment procedures are followed by the contract manager and managing agent.