

MINUTES of the 2022 KUAU BAYVIEW ANNUAL MEMBERSHIP MEETING
December 1, 2022

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

1 DIRECTOR ABSENT: Samantha Spurgeon (Treasurer)

2 OWNERS PRESENT IN PERSON: 7, 55

9 LOT OWNERS PRESENT VIA ZOOM: 7, 10, 15, 28, 29, 54, 55, 62, 68

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, 51, 82) were not present.

DETERMINATION OF QUORUM & CALL TO ORDER

The requirement for a quorum was met with 63 of the 92 Lots (69%) represented, 9 in person or via Zoom and 54 by proxy. Proxies are negated for owners who attend the meeting.

President Darlene Brothers called the 26th Annual Membership Meeting of Kuau Bayview HOA to order on Thursday, December 1st, 2022 at 6:30 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 7th, 2022 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 2021 ANNUAL MEETING

MOTION: To approve the minutes of the Annual Meeting dated December 2, 2021, as circulated. Seconded and carried unanimously (Erik Rogind / Seymour Applebaum).

2022 ANNUAL PRESIDENT'S REPORT [see below and also on website under the Meetings menu at <https://www.kuaubayviewmaui.com/php/annual-report-2022.php>]

FINANCIAL REPORT for 2022

We are in very good shape financially. Cash assets of the HOA as of Nov 1st total \$95,180.22 which is amazing considering we reduced the revenue for 2022 by giving \$2760 back to the owners this year and \$4600 last year. We will be giving another \$2760 back to the owners for 2023. The only unusual expenses this year were \$2578 for Retention Basin fence repairs, \$206 for a body-cam & harness, \$145 increase in the insurance premium, 2 replacement solar spotlights, and a few supplies. All owners are paid in full except one delinquent owner (Lot 35 Bouchers) who owes the HOA over \$5000.

DESIGN COMMITTEE REPORT

Mahalo to all owners who are investing in their homes thereby increasing property values for everyone. This year brought our neighborhood a second swimming pool, several new paint jobs, three beautiful rock walls, new roofs, and a new fence. Lot 63 applied to erect a carport, but DCCR 10(b)(vi) forbids carports. Her type of carport was not approved, but we asked owners to consider allowing higher quality covered, open-sided structures on certain flag lots (eg. Lot 63) & others that are level and set back from the street. We would like owners to be able to make the best use of their properties as long as the aesthetic quality of the neighborhood

is retained. The only objection came from Cynthia Allen (Lot 29) who said she doesn't like "the idea of opening up something that hasn't been allowed to the discretion of a few people on the Design Committee." This is really rich considering Lot 29 erected two covered, open-sided structures without Design Committee approval using a corrugated plastic roof expressly forbidden in the DCCRs.

GRIEVANCE COMMITTEE REPORT

- We are happy to report that the camera surveillance issue on Hoe Place has been resolved amicably.
- The Lot 27 leaning fence has been fixed and the trench along Lot 28 has been filled. The drainage violation on Lot 27 has been remedied. Tensions between Lots 26-27-28 have eased.
- Several owners on Lae and Laenui were bothered by dogs barking non-stop for days while the Lot 83 owner was away. The barking stopped as soon as the owner got home.
- A dog got out and scared neighbors by jumping up and scratching the leg and arm of an owner. This has been resolved amicably.
- Lot 27 called 911 in June bringing a fire truck to Hoe Place when a professional landscaper sprayed Remedy (safe for pets and children) on some weeds in the Retention Basin. The firemen said they found some dead plants, a mild smell, but nothing to be concerned about; it was a false alarm.
- We are trying to get the County to address the tripping hazards caused by tree roots lifting the sidewalk panels. Some pedestrians have fallen.
- For the past two years there have been some VERY loud booms (like pipe bombs) heard in KB at odd times. The sound is very distressing to some owners and their pets. The sound seems to be coming from somewhere near Lot 14 but there have been no admissions in response to queries. Let's just hope that whoever is responsible grows out of it soon.
- **Negative Externalities:** In Kuau Bayview we believe in 'live and let live' as long as what you are doing doesn't infringe on other people's rights. While it may be legal for licensed individuals to smoke medical marijuana, please be considerate of neighbors who are downwind. Studies have shown that secondhand marijuana smoke has effects even worse than tobacco smoke. There are better options for CBD pain relief that do not involve smoking. CBD is available in CBD oil, lotion, ointment, gel, cream, or transdermal patches. Likewise, while some owners may be licensed to grow marijuana, the smell is very strong and does not respect property lines. Out of respect for everyone's right to breathe clean air, we are suggesting growers consider a Hydroponics Indoor Growing System available on Amazon. This will produce as much as you could possibly smoke without bothering anyone. Smokers please consider smoking next to an air purifier.
- One landlord discovered that his tenant had been living in Mexico for a year while sub-leasing his house for a \$2000 profit. And that was with a property manager! We suggest landlords keep a closer eye on their properties.
- The HOA had a grievance against Lot 27 when it was discovered that Ed Vares Contracting had dumped his excess cement, garbage, and fill onto HOA property. He then covered it with dirt which raised the ground level 8" making it impossible to replace the chain link on the Retention Basin fence until the original ground level was restored. Darlene did much of the work for free in January & February, but was harassed by Gary & Robyn so much while trying to complete the work in July that a contractor had to be hired to finish cleaning up the mess. The HOA paid him and then was reimbursed by Lot 27.

RETENTION BASIN & LANDSCAPING REPORT

The wall of Haole Koa along the PCC is gone. We are no longer a bad neighbor to the Parks Department. No Haole Koa is visible in KB anymore when viewed from Hana Hwy or the Paia Community Center. The Haole Koa is being chopped out by the roots so it can be replaced with Bestill, Plumeria, Agaves, and groundcover to stabilize the slopes. In October the drainage channels under the Retention Basin fence along Lots 27-28-29 were completed. These ditches will channel runoff from these lots toward pipes that carry the water down the slope to prevent erosion. Lately the focus has been on clearing along the PCC fence to enable replacement of the chain link fabric in early December. The Hau Bush and Bestill that were planted last year in the strip inside the rock wall along Hana Hwy running from Lae St to the PCC are doing well.

SECURITY REPORT

In February the cedar gate behind Lot 29 was stolen by Gary Petersen (Lot 27). Thanks to video surveillance, he was forced to return it. But then he vandalized it repeatedly until we finally removed it. Too much drama. Since January, Gary has stolen 3 'No Trespassing' signs from the Retention Basin. In March an owner's eBike was stolen from the entrance to the Retention Basin. In June a woman was assaulted on Hoe Place by Gary Petersen. Luckily the entire incident was caught on video. There were three cars broken into on July 31 on Kaiea Place. Security cameras and lights have since been installed at these homes.

ELECTION OF DIRECTORS

As there were two candidates for two Director positions, the election is by acclamation. We welcome Darlene Aaron Brothers (Lot 7) & Samantha Spurgeon (Lot 37) to 2 more years of service on the Board.

OLD BUSINESS

- In response to the Board's request last year that owners check their landscaping for overgrowth, two large trees on Lot 17 were removed to improve views for owners above. The removal was paid for by the neighbors. Many thanks to the Knoxes for their kind cooperation.
- The lawyers who attacked the Board last December and tried to extort money out of the HOA insurance backed off when their demands proved to be fraudulent.
- The Design Rules were updated and renamed Design Rules & Guidelines. A policy adopted in 2021 has been implemented whereby Buyers are required to sign a statement during escrow confirming that they have read and agree to abide by the governing documents.

NEW BUSINESS

- 1) **MOTION:** To ratify the proposed budget for 2023 which has been available on the website 24/7 for owners' perusal. Revenue will be reduced by \$2760 given back to the owners as a \$30 Christmas Bonus again for 2023. We will soon be spending \$2800 to replace 111 feet of the Retention Basin fence along the PCC. This repair is absolutely necessary and a good use of the money. Thousands will be saved by our preparing the site, and removing/disposing of the old fencing ourselves. (Erik Rogind / Tom Atkins). All in favor.
- 2) **MOTION:** To ratify the actions & decisions of the Board of Directors since the last Annual Meeting as listed in the Feb 7, 2022 and Nov 15, 2022 Minutes. These actions increased fines for Retention Basin violations on the advice of MPD, and approved expending \$2800 for repair of 111 feet of the chain link fence along the Paia Community Center. (Greg Mebel / Tom Atkins). All in favor.
- 3) **Coqui Frogs:** Thanks to the great work of Maui Invasive Species Committee (MISC), KB dodged a bullet when 3 Coqui frogs were eliminated from Lot 43 in September and October.
- 4) **Birds:** Please try not to run over the doves on Lae St. There have been more killed in the last two months than in the last 20 years.
- 5) **Lot 27:** We prefer to focus on all the positive things that occurred in KB during the past year but, unfortunately, last year's problem with Lot 27 continued to worsen and eventually culminated in an assault on our Board President by one of the Lot 27 owners. Judge Dunn's own words describe it best:

"The video shows Mr Petersen aggressively approach Miss Brothers while she is on the front porch of a neighbor. After aggressively approaching her, he calls her multiple foul names and threatens to fill her face with Raid, wrenches a phone out of her hand as she attempts to film the interaction, aggressively backs her up against a wall. She's cowering in a defensive position. He then grabs her by the back of her head and punches her in the face and throws her to the ground. The relevant statute HRS 604-10.5 indicates harassment means physical harm, bodily injury, assault, or the threat of imminent physical harm... The video manifests both physical harm, bodily injury, & assault, and the threat of imminent physical harm ...threatening specifically to fill her face with Raid and then wrenching the phone from her hands, throwing it, away from her at distance, ultimately grabbing her by the back of the

head and then punching her, all constitute physical harm, bodily injury, and assault. It is certainly demonstrated by clear and convincing evidence... the petition for injunction against harassment is granted."

In accord with the Board's policy of 100% transparency, the 3 minute video of the assault can be made available for those who are interested. Gary Petersen has already violated the TRO and the injunction twice which is why the Board President has to wear a body cam when outside in Kuau Bayview.

To clarify what led up to this unpleasant incident, I'll present some details concerning the Lot 27 construction project. First let me establish that all of our interactions with the Lot 27 owners, Gary & Robyn Petersen, were in official roles as Design Committee Chair, Board President, or Retention Basin Committee members. In January 2021, Robyn's mother (Gladys Heck, Lot 24) had asked the Board President if she knew any rock wall builders, so she introduced them to Naki, whom she considers to be the best rock wall builder on Maui. After hiring Naki to build a 7 foot blue rock wall for \$16,000, Lot 27 kept pushing Naki to build prior to receiving the plans. They ignored Design Committee advice to stop work until the plans & permits were ready. How could Naki follow plans he had never seen? When the Inspector finally showed up with the plans, the wall did not match the plans. Lot 27 blamed Naki for the failed inspection and were so abusive that Naki walked off the job after spending \$8000 on materials and labor. The Lot 27 owners have stated in writing that they hold the Board President responsible for the loss of \$10,000 "because she introduced us to Naki." Lot 27 then had to hire Ed Vares Contracting to build a 6 foot high by 68 foot long CMU wall for \$80,000. The wall was back-filled to create an elevated, flat extension of the back yard. Ed Vares' bulldozer did major damage to both Lot 26 and Lot 28, whose owners were very upset and immediately requested the Board's help. Lot 27 refused to provide architectural plans to the Design Committee until 7 months after the wall was completed. As soon as we saw the plans, we had the draftsman visit the wall and confirm that the County-approved plans regarding drainage had not been followed. Instead of coming out of 15 two-inch weep-holes at the base of the wall, ALL water from Lot 27 was concentrated into one 4" pipe that discharged like a fire hose onto HOA property. Rain on Dec 5/21 resulted in a 12" deep gully and massive erosion on the Retention Basin slope. One storm! We quickly installed a 100' drainage hose, but Gary sawed off the pipe and threw the hose and the pipe down the hill. All subsequent efforts made by the RB Committee to prevent further damage were sabotaged. We pleaded in vain with Lot 27 to hire a drainage engineer. In the end a County Plumbing Inspector forced Lot 27 to disconnect the roof downspouts from the 4" pipe. Today the project stands unfinished, as the large cinder-block retaining wall has yet to receive a veneer, as required by KB Design Rules. In order to underscore the burdensome expenditure of time required of Board and committee members in fulfilling their duties, let me just state that there have been well over 300 emails dealing with Lot 27 during the almost two years since Gary & Robyn Petersen became KB owners.

OWNERS' FORUM

- Shannon McCafferty (Lot 68) asked how many owners in KB had experienced pipe leaks under the slab. She had had two hot water pipes leak under her slab. Both Tom & Darlene had had similar leaks and knew of several other properties that had experienced the same. Even more owners have experienced water damage due to shut-off valves breaking. Darlene offered to create a page on the website to warn owners about these potential leaks and how to deal with them.
- Greg Mebel (Lot 62), a real estate broker, mentioned that during a house sale, sellers are required to disclose if there have been water leaks in the past.
- Shannon McCafferty inquired about if there were any further news regarding Lot 70 building a second story on a one-story house, and if there were any rules to prevent second stories being added. No to both.

ADJOURNMENT: The meeting was adjourned at 8:20pm. (Greg Mebel / Tom Atkins).

2022 ANNUAL PRESIDENT'S REPORT

2022 has been a very productive year for Kuau Bayview.

- **Retention Basin Project:** Huge progress has been made on the Retention Basin. We are no longer a bad neighbor to the Paia Community Center, and to Maui in general, dropping seed pods and spreading Haole Koa onto the park property. I have cleared the entire west fence-line, and raked up & disposed of all the debris that had accumulated over the years on both sides of the fence. I have been chopping the Haole Koa trees out by the roots, which is the only way to eliminate them once and for all. I still have a lot to do but already no HK is visible from Hana Hwy or PCC. HK poses a severe fire hazard as we all witnessed when 370 acres burned on July 30th, 2022 mauka of Hana Hwy from Baldwin Beach Park, and the recent fires in Lahaina. The Haole Koa will be replaced with Bestill which is a fire-smart plant. In 1996 A&B planted 106 Bestill trees on the south slope of the Retention Basin forming a firebreak to protect the houses on Hoe Place but they didn't plant any Bestill on the PCC slope, so it was almost solid Haole Koa. Agaves, groundcover, and Syngonium will be planted between the Bestills to stabilize the basin slopes and prevent erosion.
- **Retention Basin Fence:** The Retention Basin fence is by far the most expensive asset which the HOA must maintain. The primary reason we maintain \$60,000 in Reserve Funds is to cover replacement of this fence. 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 I have determined that this is not the most efficacious way. I have examined every foot of this fence and the reality is that 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. We had always thought that only the chain link fabric would have to be replaced, but once the grass had been removed from the fence along PCC, I discovered that most of the fence posts were corroded at the base and one had broken right off, just like what happened to the fallen fence at Makana Park. Parks personnel used to regularly spray RoundUp along the fence lines. They stopped this practice when they realized that RoundUp is caustic and causes extreme corrosion. The broken post will be replaced with a Schedule 40 (stronger) post and used as the starting point for 111 feet of new fencing in early December. Some of the fence that already has the mesh on it is also in terrible shape. Four sections will be swapped out with the four good sections from the 111 foot section that is being replaced. Then the rest of the black privacy mesh will be installed to protect kids by curbing their curiosity about the basin based on the concept 'out of sight, out of mind.' The west slope of the basin is VERY steep and dangerous. The rest of the fence that already has the privacy mesh will last several more years with the repairs that have already been done.
- **Coqui Frogs:** In Sept and October, three Coqui frogs were heard and one-by-one eliminated from Lot 43 at the corner of Lae St & Hana Hwy. The Coqui Team of the Maui Invasive Species Committee (MISC) were amazingly responsive and effective. Sincere mahalos to Savanna who sprayed a citric solution to kill the frogs. Please learn how to recognize the frogs by viewing the Coqui Frogs page on the website and carefully inspect any plants you bring into Kuau Bayview. A Coqui infestation would be a disaster, especially for the four houses bordering the basin. Property values would plummet and Kuau Bayview would become un-liveable.
- **Birds:** All chickens have been relocated from the Retention Basin. They cause severe erosion with their scratching. Lately I have been finding dead doves on Lae St almost every week. This has never happened before. Please slow down and try to avoid hitting these harmless, beautiful creatures.
- **KB House Sales:** There have been 3 house sales since this time last year. All were record-breaking: Lot 43 for \$1,298,640, Lot 51 for \$1,445,000, and Lot 82 for \$1,475,000.
- **Warning!** The Board would be remiss if we did not alert the membership to the fact that a 200 lb man living on Hoe Place violently assaulted a 90 lb woman on June 19, 2022 causing a concussion, neck injury, and black eye. We don't want anyone else to get hurt so we must advise residents who use the short-cut to Paia Community Center to be very careful when walking on Hoe Place.

**2022 KUAU BAYVIEW ANNUAL MEMBERSHIP MEETING
MINUTES OF BOARD OF DIRECTORS ORGANIZATIONAL MEETING
Dec 1, 2022**

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 2022 Annual Meeting at 8:21 pm and organized as follows:

President: Darlene Brothers

Secretary: Tom Atkins

Treasurer: Samantha Spurgeon

MOTION: To ratify the minutes of the Board Action by Unanimous Consent dated Feb 7, 2022 and Nov 15, 2022. Seconded and carried unanimously. (Tom Atkins / Darlene Brothers)

MOTION: To adjourn the meeting at 8:22 pm. Seconded and carried unanimously.
(Tom Atkins / Darlene Brothers)

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 2022 Annual Meeting
Kua Bayview at Paia Homeowners' Association**

In accordance with Article III, Section 3(c) of the Association Bylaws, NOTICE IS HEREBY GIVEN that the 2021 Annual Meeting of the Ku'au Bayview at Paia Homeowners' Association will be held **Thursday, December 1, 2022 at 6:30 pm** via Zoom. Apparently we are not required to provide a physical location due to Covid, so this will be a purely Zoom meeting. **Registration will begin at 6:20 pm.** The invitation to the Zoom meeting will be emailed to owners on Dec 1st 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;
2. To elect two Directors to fill the term expirations of Darlene Brothers (Lot 7) and Samantha Spurgeon (Lot 37). Both are running for re-election. If there are other nominations received by Nov 24th, 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 2, 2022

By call of: Tom Atkins, Secretary

Agenda for Dec 1, 2022 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 2021 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 two Directors
12. Old Business
13. New Business
14. Owners' Forum
15. Adjournment
16. Organizational Meeting of Board of Directors

The complete 2022 Annual Meeting packet is available on the Kua Bayview website.