



Orchidland Estates Newsletter

Orchidland Community Association, Incorporated
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Orchidland.org

OFFICERS

PRESIDENT

Marti Morishige

VICE PRESIDENT

Nikhil Inman-Narahari

SECRETARY

Ralph Boyea

TREASURER

Sheldon Raiter

ROAD CHAIR

Dennis McCartin

DIRECTORS

Robert Arthurs

Wayne Carey

Armon Collman

Bob Dexter

Ariel Murphy

Derek Shimizu

RMC COMMITTEE

Dennis McCartin

Robert Arthurs

Ralph Boyea

Wayne Carey

Bob Dexter

COMMITTEES

BYLAWS

Ralph Boyea

Wayne Carey

Derek Shimizu

Ariel Murphy

Dennis McCartin

MEETING DAYS & TIMES!

RMC - 2nd TUESDAY @ 5:30pm
Blaines Restaurant Orchidland Drive

BOD - 3rd TUESDAY @ 5:30PM

**EVERYONE IS
WELCOME!**

Ballot Results

OLCA Board of Directors

Results for recent road maintenance fee vote are as follows:

- 356 Ballots with 447 total votes, many multiple lots owners
- \$300 /yr. for 5 years: (137 "yes") (225 "no") (25 blank)
- \$150/yr. for 5 years: (166 "yes") (222 "no") (59 blank)

Since the number of "no" votes for \$150/yr. was greater than "yes" votes, results are that neither fee was accepted. Therefore, the basic road maintenance fee reverts to \$85/yr.

Is \$85 Enough?

Ralph Boyea

When the membership voted "no" on the requests to increase our mandatory road maintenance fees to either \$150 or \$300 per year for five years, our road fees reverted to the formerly approved mandatory road maintenance fee of \$85 per year. You may recall that we increased that fee to \$150 in 2012 by continuing the \$85 base fee and adding an additional \$65 for chip-seal repair. That increase was temporary. It was only for two years. FY 2013-14 was the last of the two years. Note that at \$65 per year it took two years to raise enough money to fund the resurfacing of Orchidland Drive.

What can \$85 do? At \$85 per year, our projected budget for FY2014-15 anticipates that we will have a total income of \$167,325. \$81,215 or 49% of the total fees collected will go for Administrative costs. These costs are fixed and are necessary for the operation of OLCA [see budget for details.] Some believe it makes little sense to continue the organization when nearly half of the budget goes to administrative costs.

After accounting for fixed road expenses [see budget for details], we will have \$69,769 left over for repair and maintenance of our roads. What can we do with that amount of money? Very little. This year we spent over \$60,000 filling lakes on a few of our side roads and over \$3,000 repeatedly patching our hard surfaced roads. These efforts did not even come close to meeting our road maintenance needs. Our side roads and our chip-seal continue to deteriorate and our paving plan is in limbo.

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Are we increasing our liability? Some believe that the above mentioned facts are evidence that OLCA can't meet our obligations to provide safe roadways for our lot owners or for those who use our roads. Police, fire and ambulance response times can be totally inadequate. If lot owners are not willing to fund a basic level of maintenance of our roads, are we creating an increased, shared liability? Thus, the issue of entering OLCA into receivership was raised.

Stymied. At the April 26, 2014 General Membership meeting the members present voted to "offer the membership the option of selecting a new road maintenance fee to be determined here today or if that fee is rejected, notify membership that the board will take action to go into receivership". The motion passed with 26 in favor and 8 opposed. A motion was then made to offer \$185 for five years as the new road maintenance fee. That motion passed with 26 in favor and 7 opposed. There was supposed to be a ballot to that effect in this newsletter. However, following the General Membership meeting a number of members protested those decisions and at the OLCA Board meeting on May 20, 2014 the Board of Directors voted to "postpone action" on the motion to either change fees to \$185 per year for five years or enter into receivership "until we can return to the membership for clarification and further instruction at the November 2014 General Membership meeting." This motion passed with 5 in favor and 3 opposed. Therefore you will be receiving a billing, with this newsletter, for FY 2014-15 in the amount of \$85 for each lot you own.

What if? What if we had presented you with the option to raise our fees from \$85 to \$185 per year, and you voted for that increase? We would still have had to work with \$69,769 for regular maintenance but we would also have had close to \$74,000 per year for paving and \$74,000 for chip-seal repair. We would have been able to continue with some maintenance, move forward with the next phase of our chip-seal repair and take the next step in completing our paving plan. The percentage of our budget going to Administrative costs would have dropped to a more reasonable 26%. Fixed Administrative costs become a smaller portion of the overall operating budget with more revenue.

At \$185 we would not be able to do everything we need to do. We would however be able to move forward in protecting our investment on the chip-seal roads. We would be able to continue to meet our obligation to complete the paving plan.

Can we operate at \$85 per year? Yes, but do we want to? Do we want to merely survive, or do we want to move forward? Please come prepared to discuss these issues at the November 2014 General Membership meeting.

The Business that is the Orchidland Community Association, Inc. and Receivership

Sheldon Raiter

Orchidland Community Association, Inc. was incorporated 35 years ago, on June 19, 1979. After all these years, it is still not clear that our association is actually an incorporated business enterprise. So, what is the business? Answer: maintaining the commonly owned roads in the Orchidland Estates subdivision in the Puna District of Hawaii County.

Why is road maintenance the business of Orchidland Community Association, Inc.? It has to do with the money. And that has to do with the way the deeds for Orchidland Estates are written. When the subdivision was created the roads were organized as "Roadway Lot 8215." This lot can be found at Tax Map Key (3) 1-06-05 -165 on Map 53. There are 2400 lots in Orchidland Estates and each lot was deeded 1/2400th of the responsibility for our Roadway Lot.

Until 1983 no one knew what this kind of deed meant. In 1983 the Paradise Hui Hanalike sued Hawaii Paradise Park. The Supreme Court of Hawaii held:

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. . . where a subdivision is created consisting of lots and private roadways servicing them, and the deeds to the lots are silent as to the duty to contribute to the maintenance of the roads, owners of lots abutting the roads have a legal duty to contribute to necessary road maintenance. 66 Haw 382 (1983)

Now, a digression on the Purposes of Orchidland Community Association, Inc. Purposes are listed in both the Articles of Incorporation and the Bylaws.

The Articles of Incorporation do not contain the words "road(s)" or "road maintenance." Why not? Because the people who incorporated Orchidland Community Association, Inc. hoped for an IRS 501(c)3 tax exempt status. Why? So people could get a tax exemption for donations to Orchidland Community Association, Inc. In December of 1980 the IRS denied our 501(c)3 petition. We were given 501(c)4 status affirming our status as a non-profit business enterprise.

What happened to the rest of the listed Purposes? Nothing. They are still there but the membership, acting through their Board of Directors, can only enforce assessments for road maintenance. That is what the Supreme Court of Hawaii has said.

Now, how does a Court read "road(s)" or "road maintenance" into the Articles of Incorporation? It is in Article III, Paragraphs A and E:

- A. To aid, promote and assist in the development, improvement and maintenance of Orchidland Estates Subdivision as a desirable residential community.
- E. To promote the health, safety and welfare of the residents in the subdivision.

The Bylaws state this Purpose directly in Article I, Section 3, Paragraph d:

- d. To maintain and improve the roads of the subdivision.

The other 8 Purposes are still there, but again, the membership can only enforce assessments for road maintenance. We are now back at the money and at the Hawaii law covering non-profit corporations, Chapter 414D.

Corporate law, including the law covering non-profit corporations, is designed to accomplish several ends. For this conversation, the important point is that Hawaii corporate law encourages the effective operation of businesses in Hawaii.

In Hawaii law Receivership is part of the process of closing-down a corporation, called Dissolution. Chapter 414D - 252 is titled "Grounds for judicial dissolution," that is, the reasons that allow a judge to interfere with an incorporated business. Paragraph (b) is most significant here:

- (b) In a proceeding by fifty members or members holding five percent of the voting power, whichever is less, or by a director or any person specified in the articles, the court may dissolve a corporation if it is established that:

- (4) The corporate assets are being misapplied or wasted.

I have met many people who see that \$85/year or even \$185/year is way too little for road maintenance. That neither are sufficient to run the business is both a misapplication and a waste of assets.

None of this requires or even implies criminal activity. It only requires a demonstration that Orchidland Community Association, Inc., that is all of us, cannot take care of its business, the roads.

Finally the powers of a Receiver or Custodian are given in Chapter 414D - 254, Paragraph (c) (2):

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(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

The only power of Orchidland Community Association, Inc., a power that resides in the members and not the board, is to assess road fees.

So the question for the members of Orchidland Community Association, Inc. is how well do we take care of our business? It is the same question for those who choose not to be members. A Receiver or Custodian will use best business practice supported by all the power of the State of Hawaii. If Hawaiian Paradise Park is any example, our roads would improve. But at what cost?

Statements from Candidates for the Next Board of Directors

Bob Arthurs

Having owned property in Orchidland since the '70s, built in the '80s and '90s, my wife and I have enjoyed watching the community grow. Having been active as a Road Chair in the '90's and a director, I understand fully our problems. Being a firm believer in the democratic process, I will support the majority will of our membership.

Barbara Gantt

I would love to see our community pull together and make Orchidland the best place to live ever! I am not attached to the old stories, and have new ideas, and energy to give to the community. I am open, honest, and good at communicating. My ideas and assistance would be offered that hopefully would be good for the community at large. I have lived in Orchidland since 2007, and just bought new property on 35th Ave, so I plan on being here for a long time! I am hoping to see great changes here in Orchidland with the roads, and the community space we all own together!

Nikhil Inman-Narahari

I have lived in Hawaii for about 10 years and in Orchidland for almost six. I am a program manager and ecologist by profession. My primary motivation for seeking a position on the board is to help ensure that the will of the membership is carried out in an efficient and effective manner. This is only possible if we as the board can be successful in communicating with our membership - providing members with timely and important information and listening to their needs and concerns so that, as a community, we can make decisions that best move us toward a safe, peaceful, and pleasant future.

Janet Somalinog

I used to live here and now I am back and just purchased a 2 acre parcel in Orchidland. I have experience with 20+ years of public school teaching, and have owned many homes. I am currently working for Malamalama Waldorf School as administrative specialist . I am very happy with my neighborhood and want to meet many more people and get to work on making the community a great place to live. I want to be available to hear ideas and figure out a way to implement them. I am especially good at creating efficiency and am constantly making improvements to existing structures and systems.

Ric Wirick

I have owned Orchidland property for nine years and have lived here the past three. I recently became a volunteer road captain for 42nd Ave., and upper unpaved Orchidland Drive. My professional background is in construction and maintenance, and also includes years of experience as a wildland firefighter and park ranger. As a community member I do my part to make our neighborhood roads a little less bumpy, and as an OLCA board member I plan to follow the same course. I will listen to and be the voice for those Orchidland Estates property owners that are not being heard.

OLCA BALLOT

Please mail this ballot to: League of Women Voters P.O. Box 665, Hilo, Hawaii, 96721

BALLOTS MUST BE RECEIVED BY JUNE 30, 2014 IN ORDER TO BE COUNTED

Members are entitled to one vote for each lot owned. A member is a lot owner who is paid in full on all mandatory road maintenance fees and assessments. Please list the last five digits of all of your TMK lot numbers. Your vote will be multiplied by the number of lots you own.

TMK(s): _____

This section will be removed by the League of Women Voters after membership verification.

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ELECTION OF DIRECTORS

The following individuals are running for the OLCA Board of Directors. We currently have 9 vacancies. You are entitled to vote for each vacancy. Please read the individual bios contained in this Newsletter.

Please vote YES or NO for each candidate.

Robert Arthurs YES NO **Janet Somalinog** YES NO

Barbara Gantt YES NO **Ric Wirick** YES NO

Nikhil Inman-Narahari YES NO

The Directors will not see your returned ballot, so PLEASE do not write comments to the Board on the Ballot.

Your comments may be sent to: OLCA, P.O. Box 280, Kea'au, HI 96749-0280 or made via email: support@orchidland.org.

Please mail this ballot to: League of Women Voters P.O. Box 665, Hilo, Hawaii, 96721



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Kea'au, Hawaii 96749-0280

ORCHIDLAND COMMUNITY ASSOCIATION



Volunteers Needed!



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