



## *Leilani Community Association*

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### **Minutes February 11, 2021 LCA BOD Meeting**

#### **Zoom Format 6:30 pm**

Call to Order: Robert Golden, President

**Roll Call** and Approval of Posted Minutes: Alice Lindahl, Secretary

Present: Robert Golden, president, Andy Andrews, Treasurer, Alice Lindahl, Secretary, Patti Hatzistavrakis, Vice-President Philip Denney, Director All 5 members are present.

**Approval of the minutes of the January 14, 2021 meeting:** Approving the minutes: Andy Andrews, Robert Golden, Patti Hatzistavrakis, Alice Lindahl, Philip Denney

Robert Golden, President. Statement regarding developments in the Lawsuit

*We wanted to update everyone on the status of the Bandmann lawsuit filed against certain LCA board members and former board members. Yesterday the Court dismissed Keola Bandmann, Valerie Bandmann, Ross Standnyk and Marianne Farrell as plaintiffs, finding they had no standing or authority to bring this lawsuit. The Judge allowed Phil Denney to proceed as the sole plaintiff, since his name was later added by Plaintiffs' lawyers.*

*The Court has found the original and first amended complaints to be defective for different legal reasons, and that the original plaintiffs Keola Bandmann, Valerie Bandmann, Ross Standnyk and Marianne Farrell were not entitled to sue the LCA. The Court allowed Mr. Denney to file another amended complaint, naming the LCA as a defendant, should he choose to continue with this litigation. This is necessary because some of the claims Mr. Denney is asserting impact the rights of the LCA as a corporate entity. If Mr. Denney chooses to file a new complaint, the defendants and LCA will have 20 days to answer or otherwise respond.*

*We will keep everyone updated on any further developments.*

**Member comments (c:) and questions (q:) 3 minute limit (r:) responses**, where appropriate

q: Does only Mr. Denney have standing ? r: Phil Denney will respond to that.

q: When will ballots be mailed? Feb. 18. Status of grant for roads? (r: addressed later in meeting) SBA loan status? (r: we can use as much as needed, grant money will be used first)

c: Typo in minutes for January. q: explain engineering proposal r:(addressed later in meeting)

c: Damage to the Fissure 8 area is happening, vehicles are tearing it up, creating airborne dust. Protecting Fissure 8 is a priority, I suggest a committee to deal with its many issues. It is also a memorial to loss and hardship.

q: What can be done about pig damage? r: can call a UH Hilo group of students for pig hunting.

## **Reports: Officers and Committee Chairs**

Treasurer: Andy Andrews This January Income Statement and Balance sheet are posted. The fiscal year ends on March 30th. An incomplete report will be submitted on March 20, and the final report will be presented by the next treasurer.

Secretary: Alice Lindahl On January 29th, Five LCA members, 2 board members and 3 LCA community members had a meeting at the Mayor's office with the department heads of Planning and Public Works. Cyrus Johansen, Public Information Officer suggested that the lava area or parts of the lava area would qualify for the county's natural resource Preservation Commission program to protect natural features. We agreed to follow up.

Ikaika Rodenhurst (Public Works Director) told us that permits for building on the lava would be available just as they are for properties not covered with lava. The county would determine if the site was safe, and encouraged LCA to undertake studies of the safety of the terrain.

SECR Committee: Alice Lindahl There is an increase in dumping car bodies on the roadsides of Leilani. The committee asks members to alert the board when new car dumps occur. Some we can trace back to the persons responsible.

We were notified that a 4- wheeler was churning up the west side of Fissure 8. The committee traced the path of the wheel marks and determined that much of the traffic was entering the area on Luana street. A slide show shows the extent of damage.

A member witnessed the four wheelers coming in from the north end of Nohea Street.

## **Old Business**

Alice Lindahl: CC & R: Member Committee Recommendations on Fine Structure.

At the January 2021 meeting, the document created by the committee to establish fine structures was presented. The board of directors has the final say on the details of the document, both with regard to timing of the fines and the amount of the fines.

The proposed fines report submitted by the committee is attached to these minutes as Addendum I.

Andy asks at what point foreclosure will be undertaken. We need to set a criteria for

foreclosure. Member applauds idea of providing new incentives to obtain compliance

**Motion:** Alice makes the motion that the document as presented by the committee be adopted as policy for the CC&R Committee to use when a non-compliant property owner refuses to abide by CC&R violations after repeated attempts by LCA to resolve the problem.

Andy seconds the motion.

Voting in favor of the motion: Robert Golden President, Andy Andrews, Treasurer, Patti Hatzistavrakis, vice-president, Alice Lindahl, Secretary

Voting against the motion: Philip Denney, Director

The Motion Passes, four yes, and one no. The CC&R committee will use the fine structure, by levying fines against persons in violation of CC&Rs # 6, #7, and #14 as described in the document attached to these minutes titled: Suggested Fine Structure for Five CC&R Violations.

Andy Andrews: The new sign at the entrance to LCA.

The provider described at the last meeting quoted a price of \$218 for each sign, two signs are needed. In further communication with this business, the original price was no longer on the table, and the new price was too high to be considered. There is a company in Utah that made our signs for the community center that does a good job, and is not as expensive as our local providers quote, \$300-\$400 total. I will make arrangements with them.

Comments: Can we make the signs larger? Would like to see highway lighting at our turn-off from highway 130. How about using local providers?

Andy Andrews: Engineering Proposal for Road Repair Work in Leilani

We have analyzed the Okahara Engineering Proposal, and spoke last month regarding why this proposal was the best of the three bids and it has been posted on the website for a month.

**Motion** Andy makes the motion to accept the Okahara Proposal for \$9,000 to do the engineering work in preparation of the road construction on our damaged roads. Patti Seconds the motion.

Comments: There is no fee breakdown. Which sections are included in the project? What about the need for a permit to repair these streets?. There is a deadline of June 30 to spend the grant money. Why has the money not been spent yet for repairs?

Answer: The county must open Pohoiki Road before we can initiate phase III of the repairs, the grading of the road to the kipuka. We have opportunities for extension if the county has not opened access to Kahukai by June 30.

Regarding the SBA loan, we will only use it if needed.

Andy extends a thank you to the three members who worked so hard to get this grant: Robert Golden, Cheryl Kaupp, Jay Turkovsky and Robin Stetson. Without them we would not have successfully secured the current \$375,000 grant. The LCA membership owes them all a huge debt of gratitude, as this money would have required payment using your dues had they not obtained it.

Call for the vote on the motion to accept and fund the Okahara and Associates engineering proposal: Voting "yes" on the motion: Robert Golden, President, Andy Andrews, treasurer, Patti Hatzistavrakis, vice president, Philip Denney, director, Alice Lindahl, Secretary. The motion passes unanimously. This is the first step to the repair of our roadways.

#### Andy Andrews: The Reserve Study Results, 2021 Dues

Special Assessments are not a good approach for large expenditures faced by our association, such as the repaving of the roads. It is an unfair burden homeowners when need arises and especially burdensome to someone who has just moved in.

The recently commissioned reserve study determined that LCA has 14% of the total recommended reserve funding. 70% is recommended as a minimum and 80% is what well prepared communities set aside. Many communities require 100% funding to feel confident that they will meet future needs. Carefully calculated increases in annual assessments can build the reserve to the recommended level.

LCA is currently collecting approximately 82% of our annual billed assessments. We are carrying as part of the A/R slightly more than \$68,000 in past due amounts that are over 6 years past due. This amount should be correctly reassigned as bad debt. Our dues have increased at 4.15% from 1969 to 2020. Inflation rate was slightly more than 2%. As per the reserve study, LCA should have 4 million dollars in reserve in order to fund the repaving of our roads. If we were to raise the dues by 8% for 20 years we will be adequately funded to do this repaving. I.e. By raising the dues 8% we will have 4 million dollars in our bank account in 20 years. And LCA would not be in financial trouble should the community suffer unanticipated emergency needs. These savings will be properly defined as a Reserve Account. We will be correctly securing for our community the financial stability that it needs for the long term.

**Motion** Andy makes the motion, based on the foregoing data, and considering our future needs for having sufficient reserves, I move that we raise the dues assessment for 2021-2022 to \$220 per year. Robert Golden seconds the motion.

Questions: this will cover the re-paving in 20 years? Answer: yes. Will the new \$20 amount be put in a reserve account? Answer yes. What do we have now in reserve? Ans: We could move \$260,000 right now, but we need to be careful about not putting funds away when we are still recovering from recent years' damages.

Will we pave the lava-covered roads? Answer: no.

How many people are actually paying dues now? Ans: there are 1,281 lots which are assessed dues, and about 940 lots actually pay regularly.

Comment: We live in a low income area, we cannot expect disadvantaged people to pay. Ans: We had a dues assist program started last year. Members donated to the fund. Money was disbursed for payment on request.

Question: How much will the dues be 20 years from now at 8% increase ? Ans: \$917. Per lot per year. Inflation alone forces us to raise the dues, but this would be more than inflation because we are trying to build the reserve.

Call for the question

Voting “yes” for the motion to raise the dues by \$20 per year, for meeting future regular expenses and for establishing a reserve that meets recommendations for our community: Robert Golden President, Andy Andrews, treasurer, Patti Hatzistavakis, Vice-President, Alice Lindahl, Secretary.

Voting “no” for the motion: Phil Denney, director

By a vote of 4 to 1, the motion passes. The dues for 2021-2022 will be raised to \$220 per year and this assessment will be effective in the invoices that will go out in the coming week to all members.

Alice Lindahl: Protecting the values of the eruption site.

This is an update on the study of management for the future of the eruption site, the fissures and the lava field. The area was protected from vehicles by placing barricades on the roads that extend into the lava covered areas. A policy was passed on August 28, 2020 that the area would be protected from traffic and road building by maintaining the barricades. Grading of roads without permission was also not allowed

This process was interrupted by the unpermitted grading of Luana Street on December 22-23 without safeguarding the lava area or the community. This requires that the board deal with the consequences of this action.

Alice has talked to our insurance representative, and she says that the LCA policy would cover accidents up to \$1,000,000 one million dollars unless the LCA can be shown to be neglecting to inform visitors of risks. This can be done by the following

1. Build a road that meets high safety standards
2. Place a gate to indicate that vehicular traffic is not allowed except by permission
3. Put up signs to indicate safety hazard
4. Create a well-advertised policy of no trespassing

None of these steps has been taken.

Because Luana street has been opened, our liability for accidents has increased. The LCA board is in charge of maintaining a safe environment.

In addition to protecting us from lawsuits, the removal of the barricade and the road has created the following problems for residents who live near the lava:

1. Attracted additional cars, motor bikes, 4 wheelers that damaged the fragile landscape.

This is supported by data from security cameras

2. Added to illegal parking on Luana Street
3. Caused increase in the number of hikers going up Fissure 8
4. Loss of peace and quiet in the residences near the lava.

**Motion** Alice makes the motion that we take the following steps to protect the LCA from the increased legal liability and the increased unwanted intrusions that residents are facing right now. This action is necessary because of the unauthorized opening of Luana Street and removal of the barricade on December 22, 2020. The board will undertake each of these five items:

1. Erect a gate at the south end of the bulldozed portion of Luana Street. Erect fencing to each side to prohibit driving around the gate
2. Replace no trespassing signs, (which were removed), private property signs, and signs describing the danger of unstable, still active volcanic terrain.
3. Create a standing committee of LCA members who will advise the board of problems associated with the lava area as they arise and explore solutions to those problems.
4. Write a letter to each LCA member and ask their opinion on the future development of the lava-covered area inside Leilani Estates.
5. When the response from the whole membership is in, the board will create a policy that has elements for protection of the area as well as opportunities for members to build a home on their property as long as they follow all the county (permitting) and LCA guidelines (CC&R) for construction.

This motion takes into account the needs and interests of residents who favor protection for the fragile area and those who would like to make use of their properties. What we all wish to avoid is: noise, damage to the volcanic site, disruption of peaceful neighborhoods, and illegal activities.

Discussion PHil: It is not the role of Leilani Estates to look out after individual properties. If there are motorcycles out there, call the police. I am opposed to gates. I don't want vigilantes controlling. I don't think we have a role in preserving property, the police will do this job.

Comment: Leilani should not have to pay for replacing the barricades. The person who removed them should replace them. I saw a four wheeler come down Luana Street and cut across private property.

Comment: we support the replacement of the barrier.

Comment: Sam Estes should put the barrier back. He has no business cutting the road open.

Comment: The owner of the property is responsible for liability, not us.

Comment: LCA is responsible for the safety of the community, this is taking our responsibility.

Comment: Sam Estes said he would contribute toward purchasing a gate.

Comment: We like the idea of putting the barrier back.

Comment: We could do more if a gate does not work, lock it, put barricade back

Call for the vote:

Voting “yes” Andy Andrews, Treasurer, Patti Hatzistavrakis, Vice President, Alice Lindahl, Secretary, Robert Golden, President

Voting “no” Phil Denney, Director

The motion passes to enact the five steps outlined in the motion to create protection of the lava area which is now open to vehicles and trespass onto private property.

Phil Denney: Infrastructure at the community center. Fencing at the children’s playground has been removed, management of bathrooms described.

¾ inch Base Course is needed to fill potholes on Moku/Kupono Please write and sign an undated check for \$425.00 and leave the payee blank. This would allow Michael to take this to a provider when he needs it. Greg’s rental tells me a load of base course costs \$425.00.

Andy: Our procurement policy allows Michael to spend this much money for the LCA needs without any approval. We cannot write an undated check, that is illegal. Robert: The provider can invoice us.

Phil Denney: Election Election information is ready to go. Candidate forum Feb. 20, 2 pm Zoom

**Motion** Phil makes a motion to approve Ann Kalber and Cindy Helton as the Tellers Committee to handle the counting of the ballots for the election. Robert seconds the motion.

Call for the vote. Voting “yes” Robert Golden , Andy Andrews Patti Hatzistavrakis Phil Denney, and Alice Lindahl. The vote is 5 to 0, the motion passes unanimously.

The ballot mailing is going out on Monday, and not the invoice mailings.

Who will determine which members are in good standing to vote? We will ask Kim to create a list of members who are not in good standing.

Adjourn 9:20 am 2 hours 50 minutes 21 members, 26 participants

The next meeting is on March 11, 2021 Zoom meeting

To: Alice Lindahl [alindahl@leilaniestates.org](mailto:alindahl@leilaniestates.org), Leilani Estates Board of Directors,  
Robert Golden, Andy Andrews, and Patti Hatzistavrakis  
From: Jay Turkovsky, Janet Morrow, Mark Ellis  
Date: January 13, 2021

Subject: **Suggested Fine Structure for Five CC&R Violations**

Our Committee met and came up with the following recommendations for fining chronic violations of the CC&Rs in Leilani Estates.

The four violations described below will all be subject to the fines in the table that follows the list.

1. Fine Structure for CC&R #6 Living in a temporary dwelling without plans to build a residence and a timetable for completion. This could be a tent, shack, camper, trailer, garage, carport, or any other structure that is not a residence as defined by county building standards.
2. Fine Structure for CC&R #7 Noxious or offensive activity which is an annoyance or nuisance to the neighborhood. This can be permanently running a generator in an established residence for electricity if neighbors can hear it, running a chop shop on the property, dogs barking all night, criminal activity such as drug dealing or any other annoyance for which neighbors have a legitimate complaint.
3. Fine Structure for CC&R #14 Keeping derelict discarded car bodies in the property.
4. Fine Structure for CC&R #14 Rubbish and Trash when the property has become a dumping ground for garbage and trash, and/or chop shop has been set up car repairs to the extent that the property looks like a junk yard.



## Fines for violations 1-4

Fines	1-3 months	4-6 months	7 - 9 months	9-12 months
Rate	\$25.00 per day	\$50.00 per day	\$75.00 per day	\$100.00 per day
Total amount for three month period	\$2,250.00	\$4,500.00	\$6,750.00	\$ 9,000.00
Cumulative total at the end of each three-month period.	\$2,250.00	\$6,700.00	\$13,500.00	\$22,500.00

Fine Structure for CC&R #16 ~~No County Building Permit has been issued on a site where building has begun.~~

CC&R#1 No building plans have been received or approved by the Architectural Committee of LCA

Fines	1-3 months	4-6 months	7 - 9 months	9-12 months
Rate	\$15.00 per day	\$30.00 per day	\$45.00 per day	\$60.00 per day
Total amount for three month period	\$1,350.00	\$2,700.00	\$4,050.00	\$5,400.00
Cumulative total at the end of each three-month period.	\$1,350.00	\$4,050.00	\$8,100.00	\$13,500.00

This committee thanks the board for the opportunity to help in the management of CC&R rules in our subdivision. We worked on those violations that have the most serious impact on the well being of neighborhoods. We recognize that other violations may need attention if violation letters are not sufficient to get compliance.

This committee further recommends that a group of member volunteers be recruited to address other CC&R violations in the future, including more fines if necessary. We believe that if a group of people should be able to speak with violators, this would be more effective in the long run than a violation letter alone.