

**NAPILI VILLAS
ASSOCIATION OF APARTMENT OWNERS
2021 ANNUAL OWNER'S MEETING
Kumulani Chapel – The Barn
1000 Office Road, Kapalua, Hawaii 96761
Saturday, April 10, 2021**

DIRECTORS PRESENT

Jeff Thorson; President; Susan Barron, Secretary; Kevin Garvin, Eddie Kramer & Steve Phillips, Directors-at-Large.

OWNERS PRESENT

Registered with Quam Properties.

OTHERS PRESENT

Rod Quam, Managing Agent; Lysa Tracy, Director of Association Management; Mike Fahnert, Community Association Manager; Jim Cribben, Site Manager; Rebecca Filipovich of McKeon, Sheldon and Mehling.

DETERMINATION OF A QUORUM

The Bylaws of the Association of Apartment Owners of Napili Villas, specify that a quorum exists when there is present at any meeting, in person or by proxy, a majority of the apartment owners.

Owners comprising 53.63 percent are present in person or represented by proxy, thus constituting a quorum.

CALL TO ORDER

Rod Quam called the 2021 Annual Owners meeting of the Association of Apartment Owners of Napili Villas to order on Saturday, April 10, 2021 at 1000 Office Road, Kapalua, Hawaii 96761 at 9:22 a.m. HST.

PROOF OF NOTICE OF MEETING

A notice of this Annual meeting, Agenda and proxy were sent to all owners of record on March 11, 2021.

A copy of the notice and the Certificate of Mailing will be made a part of the Annual meeting file.

PARLIAMENTARY PROCEDURE

In accordance with 514B, Hawaii Revised Statutes, this meeting will be conducted using the most recent edition of Robert's Rules of Order Newly Revised.

APPROVAL OF MINUTES OF PRECEDING MEETING

Approval of the minutes of the 2020 Annual meeting is deferred and will be approved at the next 2022 Annual Owners meeting.

REPORT OF OFFICERS

The President will not give a formal report. The President and the Board relinquish the Floor to the Association's attorney who is representing Napili Villas in the Department of Justice lawsuit against the developer. The current county rules that allow the Annual meeting to take place, specifically disallow an owners forum. Rebecca Filipovich of McKeon, Sheldon and Mehling will address the ownership now and provide updated information regarding the lawsuit. The details of her report and the question answer period are detailed at the end of these minutes and made a part of the permanent record.

Year-End Audited Financials

Rod Quam reviewed the 2019 and 2020 audit summaries that were provided in the meeting packet. A copy of the audit and financials are available by email request to the management company.

SITE MANAGER'S REPORT

Jim Cribben presented his report. His report was accepted and is detailed at the end of these minutes and made a part of the permanent record.

ELECTION OF DIRECTORS

Article II, Section 1 of the project bylaws specifies that the affairs of the Association shall be governed by a Board of Directors composed of five (5) persons, each of who shall be an owner, co-owners, vendee under an agreement of sale or an officer of any corporate owner of an apartment. There are three (3) vacancies on the Board that we must fill.

Susan Barron and Kevin Garvin have expressed a desire to run for another term on the Board and their names have been placed on the ballot.

Alessandra Stout has expressed a desire to run for the Board of Directors and her name has been placed on the ballot.

Chair, Rod Quam, asked for nominations from the floor. Hearing no further nominations, the nominations were closed.

The Nominees are Susan Barron, Kevin Garvin and Alessandra Stout.

Motion:

To elect Susan Barron, Kevin Garvin and Alessandra Stout to the Board of Directors, by acclamation.

(Bruns/Phillips)

CARRIED unanimously.

Jeff Thorson was acknowledged for his service on the Board and his dedication to the community.

ELECTION RESULTS

The newly elected Board members are Susan Barron, Kevin Garvin and Alessandra Stout.

DESTROY BALLOTS AND PROXIES

Pursuant to Hawaii Revised Statutes 514B-154c, the managing agent will destroy all ballots and proxies after 60 days.

NEW BUSINESS

Resolution on Assessments

There is a resolution that must be considered and voted on in order that we make the proper filing of our tax returns. This resolution covers maintenance fees and unrelated income paid during the year. We collect from all of our owners, on a monthly basis, maintenance fees, which cover the cost of running and maintaining the project. At year-end, we may have a balance in our checking account, operating reserve account and other specific accounts that will carry forward to the next calendar year.

Present tax rulings indicate that these funds, if not specifically designated to be used in the following year, would be taxable. Consequently, the resolution to cover the 'rollover' of these funds meets the necessary requirements.

RESOLVED, By the Napili Villas Association of Apartment Owners that the amount by which each member's assessments in the 2021 fiscal year exceeds the total payments of the Association for maintenance, repairs and other expenses and capital expenditures of the Association as the Board of Directors has appropriately paid or determined payable, shall be applied to the 2022 regular member assessments in accordance with IRS revenue ruling 70-604.

Hearing no objections, the resolution is adopted.

MINUTES OF THE 2021 ANNUAL MEETING MINUTES

Motion:

To Authorize Board to approve the 2020 annual meeting minutes as to form and content to expedite distribution to owners.

Hearing no objection, the resolution is adopted.

AUDIT

Motion:

To authorize the Board of Directors to select an auditor to perform an audit, unannounced verification of cash and prepare the tax returns for the Association for the fiscal year ending December 31, 2021.

Hearing no objection, the motion is adopted.

RATIFICATION OF BOARD ACTIONS

Motion:

To ratify the actions of the Board of Directors during the fiscal year 2020.

Hearing no objection, the motion is adopted.

NEXT MEETING DATE

The 2022 Annual Owners meeting will be held April 9, 2022.

ADJOURNMENT

With no further business before the membership, and hearing no objection, the meeting was unanimously adjourned at 10:40 a.m. HST.

A brief Organizational Board meeting will follow this annual meeting.

Respectfully submitted,

Yatta Johnson

Stenographer

Tell Me More Stenography Services

McKeon Sheldon Mehling Presentation and Q&A transcription

McKeon, Sheldon Mehling represents the Association as general counsel but also with respect to this lawsuit as litigation counsel primarily because the associations insurance company declined to cover the defense of this lawsuit. A letter was sent to all owners on March 24, 2021 that gave more specific information about the lawsuit.

Rebecca Filipovich of McKeon, Sheldon Mehling answered questions, regarding the lawsuit, from the owners present.

Q: I received a letter. I have a townhouse unit which comprises a ground floor section and a second-floor section with a 16-step stairway internally to the upper level. Is that somehow considered to be a ground floor unit that's inhibiting access to 50 percent of the square footage in my unit because there's a 16-step stairway internally that cannot be navigated by a wheelchair or anybody with disabilities.

A: Just to be clear, your unit is a 2-story unit; so the two-story units are not considered covered units under the Fair Housing Act, so they are not required to be accessible. It's only the single-story ground floor units. The informational letter was sent to all owners and we sent it to all owners because the common elements affects all owners.

Q: So, you're saying that with the renovations that they would do a causeway back?

A: We don't actually know what they have proposed yet, as a repair, but that was an example of one of the issues that will affect all owners because it will affect the look of your project and potentially the value of your project. So, the process that is happening now and part of what Albert Kobayashi experts will be looking at in June are issues like that; how do we go about making those units accessible.

Q: Is it in my best interest to allow Mr. Kobayashi's team or the Department of Justice to enter my unit to look at it?

A: The Association and our firm don't represent individual owners, but in the general perspective we perceive it as being in everyone's interest. We say that in the letter Ground floor unit owners may be subject to a future claim if their unit is not in compliance with the Fair Housing Act, and so for those reasons from a general level we would say if you could someone else to make those changes for your and bring your unit into compliance, that's always a good thing.

Q: Where are we in the litigation process with the Department of Justice?

A: I'd like to say we're further along than we are; we're really still in infant stages. The lawsuit has been going on for quite some time. There was about a year delay because of Covid. The attorneys for the Department of Justice are in Washington, the attorney for Kobayashi are on Oahu. So, they have not been able to come out and view the project or the Association's records for at least a year. We made the Associations records available through the process of discovery, but again, to save costs to the Association we just said, "Here, we will leave them in a storage room, and you can come out and look at them." And so, the Department of Justice has done that Kobayahsi has not but we suspect that that will take place sometime through the summer.

Q: If the Association does get a settlement, would it go to the individual owners or directly to the Association's operating and or reserve accounts?

Q: Assuming the Association would make corrections on the outside, what about the inside?

A: That would be up to each individual unit owner to elect whether or not they are going to make repairs and this is one of the sources of contention that we have had with the Department of Justice and Kobayashi. Kobayashi was trying to put the onus on the Association

To go out and give notice to each individual ground floor unit owner and then the unit owner would opt into these repairs and we've said, "No. First of all, the responsibility to give actual notice to the ground floor unit owners falls on you because you didn't build it properly. And, second, we should be from the starting point with proceeding with the view that every single ground floor unit owner should have their unit fixed and owns should be given the opportunity to opt out rather than opt-in. We are still negotiating that point and discussing that point but in terms of any settlement amount the Association has not brought claims for damages against the general contractor or the department of Justice, its simply involved in this lawsuit to facilitate the repairs. So, the Association is not going to receive a sum of money to make these repairs. Kobayashi is going to be involved in making the repairs and the Association is going to want to monitor and oversee and require some accountability with what repairs are being made, how quickly they are being made; just to make sure we're moving this along quickly. There has been a proposal circulated by the department of justice that would allow for a fund for aggrieved persons. The statute, Fair Housing Act allows for aggrieved persons to come forward and say that I have been personally discriminated against by the inaccessible conditions of a project and so there is a fund being proposed to be set up between the Department of Justice and Kobayashi that would compensate individual owners in that respect. Specifically, for ground floor unit owners if you elect to have repairs made to your units as part of the Department of Justice proposal they have also proposed that a per diem amount be given to unit owners for relocation expenses because obviously these repairs are not going to happen in a day. That per diem amount is set by federal law and I believe, its something like \$457 a day or something, don't quote me. The idea would be that you would be able to stay another place while those repairs are being made.

Q: (Lysa Tracy) I have a question on behalf of owners; can you talk about how the Association may be able to recoup some of the legal fees associated with this lawsuit?

A: We certainly raised that from the outset; we tendered this claim to both the Association's Directors and Officers insurance and the general liability insurance both denied coverage we called both and they were denied again and so the decision was made, rather than going out and trying to get coverage counsel to fight a separate parallel lawsuit on coverage money would be better spent having us just continue to represent the association and try to keep costs down by pushing a lot of the burden and logistical issues Kobayashi. In terms of recouping attorney fees we raised that early on and we will continue to do so in our experience in these types of cases it's not likely that we are going to be able to recover all or even some of the attorney's fees which is why we are trying to keep those costs down. We recognize that it is expensive litigation is always expensive. I think as we move into a more targeted negotiation dealing with each property that will reduce some costs because we won't have to be sitting there talking about other associations we can focus just on Napili Villas, but in terms of overall recoupment I can't make any promises but we are trying.

Q: Who monitors the legal fees?

A: (Lysa Tracy) The Board in combination with Quam monitors and reviews the legal fees. Your Board has been very diligent in questioning, asking, limiting contact to the attorney. We take everything into consideration before asking Rebecca to come in a situation like this where there are fees. I do not have

that legal fee number in front of me, we can get that. If you go to the website, the financials are posted. We have not incurred any other legal fees at this time. We have a few legal fees in 2020 that related to collections, it was not a large amount. So, if you look at financials and you look at that legal expense, the majority of that expense relates to the lawsuit. We can provide that information later. I didn't prepare for that question in advance.

Keep in mind, that last year we had a significant savings in some areas but your fees did go up; it did go up because we knew there were going to be additional legal fees this year and we tried to anticipate that. The majority of the reasons for your fees was because your insurance premiums due to water leaks and etc. claims against the association were very severe. You're premiums went up over \$30,000. Yes, you did see an increase but the majority was not do with the legal fees. You're in a very good financial position. We are not anticipating to have to do a special assessment at this time and we don't know what 2021 will look like when we plan for 2022. I can't guarantee no increases, we don't know until we see how this year proceeds.

A: May individual owners represent themselves?

Q: In a lawsuit that is in court entities are not allowed to be represented by people who are not licensed attorneys. So, unlike if you go into a court yourself as an individual you can represent yourself as an individual, entities must be represented by licensed attorneys. So, in this case the association as an entity, a nonprofit corporation, would have to be represented by a licensed attorney.

Q: What are the considerations on diminished value pre-or post-sale of our units? What repairs are being proposed that may in fact affect the configurations of our units and diminish the value of our units?

A: No repairs as of now have actually been proposed. Inaccessible components of the project have been identified and alleged by the Department of Justice but because Kobayshi has not come out here with their experts to view the project they have not come to any agreement on the scope of repairs that are going to need to be made or the means and methods which those repairs are going to be made. From our experience in having to deal with Fair Housing Act issues, a lot of times we have seen very disruptive repairs. Part of, at least with respect to the common elements issues that have been identified as being inaccessible include the stairs but also include the running slopes and cross slopes of the sidewalks. So, a running slope is a slope in a straight direction and cross slope being a slope in the side-to-side direction. The Fair Housing Act sets very specific threshold limits on how steep those slopes can be and the Department of Justice in their inspection several years ago went out and measured running slopes and measured cross slopes and found them to be in excess of what is required. So, in our experience in having litigated these issues, our firm several years ago went to trial on Oahu and part of the issues that we litigated at trial were those exact issues; the cross slopes and the running slopes and the Judge came back and required that the developer pay for our repairing of those cross slopes. So, they are real issues. They will affect the – at some point construction will be required. We don't know the nature and the extent of that yet. But our job as your representative are to minimize the extent to which those repairs are going to diminish the value of your project.

Q: What do they do? So, the repairs come and happen and it is diminished so his value is diminished. What is their recourse for recouping that loss?

A: That's a tricky one because you basically have to be – you'd have to be able to prove that bring your project in compliance with a Federal law somehow diminished the value of the project. And, I understand what you're saying in terms of aesthetically, if the project changes, but from our perspective we have looked at this to the extent that any proposed changes could have an effect on value. Whether that effect

is negative because we're bring the project in compliance with the law or is positive that's very hard to tell. I think owners – the Federal statute that the DOJ brought the litigation under it doesn't require individual owners – it doesn't allow individual owners to bring claims against the developer for the design and construction, those claims have long past – the ability for individual owners to bring those claims has long past. To the extent and individual owner could conceive of another claim, I can't advise on that.

Q: I'm just curious if you can give us a feel – I know you mentioned that was a statue that required all these handicap things, how did Kobayahshi not know to check that off on their check list when building this property? You understand my question. How did this happen in the first place?

A: I understand your question. I'm not the in the mind of Kobayahshi when they built it, obviously. But, we have seen that across Hawaii there has been a general disregard of the housing act rules. They overlooked it or they value-engineered around it and said, its going to be cheaper to build it this way, so we're going to build it this way. We, like I said, went to trial a couple of years ago and that project was built after this project and we've still seen newer projects – we have a project on Oahu that was built in 2016 and they still took no regard to the Fair Housing Act. So, its something that developers should know but whether they build it in accordance with the Fair Housing Act is something different all together.

Q: For an owner that wants to rent their unit out, and there's an owner that doesn't want to comply to the retro fitting of the interior of their unit it sounds like the individual owner has the option to comply or not at this time, to retrofit or not what my question is, to protect an owner from being sued in the future could there be some wording put in the lease that the owner puts together for the prospective tenant saying that – some proper wording explaining we are not handicapped – we're not an ADA unit and, you know, that would keep the owner from being sued in the future?

A: I don't think – I mean, nothing can stop an owner from being sued. It goes to the defense because people are going to sue you if they want to sue you. But, the -- it raises a couple of issues, one is a general disclosure issue, period. If individual owners do not opt to make these repairs and then you sell your unit to someone down the road and then they get sued because their unit is not accessible they will come back to you and say, " Hey, there was this lawsuit. You knew about this lawsuit. Why didn't you tell me that my unit wasn't accessible?" And, so there's certainly disclosure issues involved in that.

Q: So, to tag off his question. Is the justice department pulling in the County of Maui, I mean, obviously, when a plan that goes out to a project like this there has to be a plan review, once a plan review is bought off on or signed then their inspectors so are they going to pull in the County of Maui to this lawsuit?

A: We get this question all the time. It is a good question and you're thinking along the right lines but unfortunately, the reality is the county is never brought into these suits and even if they were brought into these suits they are never held responsible because the county has all of these protections built in to the county ordinances and the codes that insulate them from this type of liability. As I mentioned, our firm does a lot of construction litigation and we get this question a lot, "How'd it get past the county?" "Shouldn't the county be responsible?" just because something was approved by the county -- just because the county issued a building permit and came out and did inspections doesn't mean that that construction is built in accordance with the code. That happens a lot. I believe at the time that this project was constructed Maui county hadn't actually adopted as part of their building code, Maui Housing Act provisions and so they really had just punted t the federal government to say this is your enforcement so this project that's an issue.

Q: What I'm gathering from what you just said is that disclosure is not really going to be an issue unless you don't disclose this. Meaning, right? I mean, if as an owner we decide to sell our units we have that full disclosure that it is not ADA compliant and now that is not an issue of being - even though I know you said you can still be sued but that can be fought against because you know full well what you're getting into buying this unit?

A: I can't give advice to individual unit owners but generally, we have seen that if you disclose a condition. I can't give advice of the nature of that disclosure but that generally helps when the buyer comes back later and says, "Well, I'm getting sued ..." if you disclose it, you can say, "Well, you knew about it."

Q: If we as an Association were to put something in place after the original development had been done that was not according to the original plans that had potentially slopes and running slopes and cross slopes that did not hit these standards what would you advice be to us if we created and egress and ingress in the property that did not accommodate those things personally?

A: So, what you're asking is if any unit owners or the Association make post construction modifications to the project? So, that's one of the questions that Kobayashi is asking because they're trying to use that as a defense to their own liability. We have gone out and interviewed the Board and interviewed some owners, as far as we know, the elements, like running slopes, cross slopes, the stairs are all original construction. There haven't been any additional curb cuts made or the slopes haven't changed, the only issue that we think may arise has to do with the number of handicap parking stalls in the project. Right now those don't conform what exists at the project - don't consist with what was specified in the declaration, but we haven't been able to tell whether the stenciling of the handicap parking stalls was original by the developer because a lot of times developers will - in their governing documents and the public reports identify handicap parking stalls because their supposed to but when it comes time to marketing and selling the units, as buyer may say, "I want this stall" and it's a handicap stall and so they'll say, "sure, ok." And then that handicap stenciling doesn't happen. Because this project was built so long ago we don't really know for sure, but that may come up as an issue that the Association would have to deal with.

Q: What you're saying is - what's in question is - that the amount of handicap stalls that were there originally was not the amount that was supposed to be allocated for the amount of units, right?

A: That's what we suspect, we don't know for certain. Whether that came out of the developer or whether that was something that the Association did after construction.

Kobayashi has filed in other projects what are called "crosslinks" against the Associations trying to claim contribution and indemnity for the conditions that they built basically, alleging you made post construction repairs. The Federal statute under which the Department of Justice brought this claim, doesn't recognize common law claims for contribution and indemnity so there's an argument right now and there's a hearing next Thursday - this Thursday on this exact issue whether or not Kobayashi can try to bring in 3rd parties for contribution and indemnity. Our perspective is that they cannot. Right now Kobayashi has not alleged any cross claims against the Association but we will know a lot more concretely after Thursday whether or not they can do that.

Q: How did the lawsuit get started?

A: It can happen in any number of ways. A lot of times, this particular lawsuit the Association was contacted by the Department of Justice. The Department of Justice asked to do an inspection of the project because it was known to have been built by Albert Kobayashi and they were doing an inspection

of building built by Kobayashi under this allegation of a pattern in practice of discrimination. I mentioned there was a project on O'ahu and four (4) projects on Maui that were all constructed by Kobayashi. So, the Department of Justice got wind that this project was constructed by Kobayashi, which is all public. They came out, did an inspection of the common elements of some ground floor units and included it in their lawsuit.

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Jim Cribben Site Manager Report

Painting Project

Scott brothers painting is our contractor he has over 33 years experience on Maui. He also painted the property back in 2010.

We are currently on the 19th building. This project has been moving along at about 2 weeks per building. We should be completed in August which will make 1 year start to finish.

The workmanship has been great and each building is inspected and all touch up will be addressed as the work progresses.

Rain Gutters

This project was started at the same time the painting project started. During the removal of the old rain gutters all dry rot was repaired and painted before the new gutters were installed. The gutter installers identified some issues and made corrections with added down spouts. We also installed a larger and heavier gauge rain gutter than the old gutters. Another addition that was added the gutters in locations that called for leaf guards to be installed. Part of the contract was we will receive a free gutter cleaning after the first year. They also have been very cooperative in any attention needed in adjustments discovered during our recent heavy rains this winter.

Common Light Retro fit

He have decided to retro fit the exterior light fixtures by converting them to L.E.D. This project is done when the current fixture fails or time allows. This project is low priority since the current light fixtures do function.

Landscaping

Landscaping / Irrigation. This winter was exceptionally wet and all steps were taken to take advantage of this with the entire properties irrigation systems shut down for weeks at a time. This savings is in the hundreds of thousands of gallons of water as reflected in the water bills. The property looks well maintained; the crew is well acquainted with the property and the cycle they have in place for trimming and maintenance shows their diligence. Island plant has been our landscaping contractor and over 5 years. For the length of time they have been on property the property continues to improve.

General maintenance issues this year were low. We did have some damage to the fences with the high winds in March which blew 12 sections of fences over or broke the supporting metal post.

Hand Railings- Sherman Williams was contacted and they recommended the coating that was used. It's very durable product and all railing were prepped and primed before the final coat was completed. The hand rails look great.

Dry-Rot repairs all buildings were inspected prior to the start of the painting. These areas were removed and the new material was installed after receiving a primer coat to all sides and end cuts. Chalking was also checked carefully and replaced were needed.

The back flow preventers were inspected and it was determined that some of the hardware had become rusted and needed to be replaced. These are inspected annually