

Because of the importance of changing the KICA Covenants, KPOG urges you to read this e-mail thoroughly, as well as the information provided in the KICA Annual Meeting packet. Questions on this e-mail communication should be directed to KPOG President Diane Lehder at 843.243.9005 or dzlehder@comcast.net.

Please note: A printer-friendly version of this document is available at www.kiawah.org.

KICA's Proposed Covenant Changes – A Discussion

At KICA's Annual Meeting on March 18, Kiawah property owners will vote on proposed changes to the Community Association Covenants. According to KICA's website, "The amendments would (1) expand the permitted uses of reserve funds and (2) authorize donations for the conservation of natural lands and habitat on Kiawah Island."

Changing the KICA Covenants requires approval by 75% of the votes cast. Because of the significance of the proposed changes, KPOG is providing additional discussion for consideration, as well as questions generated in our discussions with property owners. KPOG is making no recommendation here. Property owners should thoroughly read the information provided in KICA's Annual Meeting packet as well as the information provided here, so they can make their own informed decision on this issue. Our hope is this email helps property owners understand more fully the issues involved.

At the urging of both individual property owners and several standing KICA committees, the KICA Board has scheduled a town hall style meeting Thursday, February 15 at 7 pm in Town Council Chambers to discuss the proposed amendment. At that time, KICA Directors will answer questions from Association members. Property owners unable to attend that meeting may submit questions in advance via email to tammy.mcadory@kiawah-owners.org. While it is not possible to set up an audio link to that meeting for those off-Island, a report summarizing the meeting will be posted on the Association's website. There is sufficient time for Association members with questions to post their proxies **after** that meeting and still guarantee their arrival well in advance of the March 14 deadline.

Discussion

The proposed amendment concerns use of the Association's reserve funds. The source of these funds is an assessment buyers of property on Kiawah Island pay at time of purchase. KICA's 10-year budget projects these funds to add \$2-2.5m in each of the next 10 years.

As indicated on KICA's website, there are two major provisions of the proposed amendments. According to the existing Article V, Section 6(a) of the Covenants, the use of reserve funds is limited to major rehabilitation or major repairs of infrastructure, emergency repair as a result of casualty loss such as storm or fire, recurring periodic maintenance, initial costs of any new service provided by the Association, and for repairs, renovations, and improvements to the Sandcastle and its related facilities. The proposed change would allow the Association to spend these funds "for any purpose of the Association that qualifies as being exempt from taxation under the provisions of the Internal Revenue Code of the United States dealing with property owners' associations." Exempt functions include the "acquisition, construction, management, maintenance, and care of association property," but exclude operations.

Analysis

- This change would give the Board additional flexibility in implementing portions of its yet to be developed long range plan, particularly in the area of property owner amenities. At the same time, it would also remove some of the checks and balances currently provided for decisions which now require a property owner referendum.
- With the exception of limiting spending to "exempt functions," there are no guidelines for decision making in this amendment. The Board has expressed its intention "to respond to member priorities as assessed in member surveys and the strategic planning initiatives."

Questions Raised by Property Owners:

- Has the Board of Directors considered locking in a specific dollar amount or percentage of reserve funds as protection against future emergencies?
- Who will decide the allocation of funds, the Board of Directors or the Chief Operating Officer? Will the Strategic Planning Committee have any role? How will projects be evaluated and decisions made?
- Will property owners be given the opportunity to provide input on how these funds are spent at specially called meetings or forums, a Finance Advisory Committee meeting, or at an annual budget hearing?
- If the Board believes there are sufficient funds to address future emergencies, maintenance, and repairs, did it consider reducing the increase in the 2007 annual assessment, effectively "returning money" to property owners?
- Has the Major Repair and Replacement Committee (MR&R) endorsed the proposed amendment? If so, what was its rationale; if not, why not?
- How much disaster coverage does KICA's insurance provide? Even with this coverage might property owners still face another special assessment to help pay for recovery after a major storm, as there was after Hurricane Hugo?
- If a major disaster were to occur between when monies from this fund were allocated and when they were spent, could that allocation decision be revisited?

The second provision would allow the Association to donate money from reserve funds to a tax exempt organization “whose purpose is the conservation, protection, and preservation of natural areas on Kiawah Island” to be “used exclusively for the purchase of land on Kiawah Island.” At the present time, the Kiawah Island Natural Habitat Conservancy (KINHC) is the only organization meeting these requirements. No reserve funds acquired before June 1, 2007 could be used for this purpose.

Analysis

- The objectives of this KICA proposal and the goals of KINHC are well aligned. In addition to maintaining healthy habitat for our Island critters, the conservation of additional open space helps to preserve our unique environment, ultimately supporting Island property values.
- Any new revenue stream for a qualifying tax exempt organization could accelerate land preservation on the Island.
- A tax exempt organization can reduce the cost of acquiring land by negotiating a lower purchase price, thus stretching the purchasing power of the monies it expends. If land is donated to a 501(c)(3) organization, the individual seller benefits by being able to take appropriate tax deductions.
- Individual property owners would be unable to claim deductions for monies donated by KICA on their behalf to a tax exempt organization.
- There is no cap on what may be donated for land acquisition in any one year, neither is there a guarantee that any monies will be allocated at all.
- Since the possible allocation of an unknown dollar amount will be done on a year-to-year basis, it would be difficult for any tax exempt organization to factor these funds into long range planning.

Questions Raised by Property Owners:

- Recognizing this will necessarily be different each year, in what general proportions will reserve funds be allocated between land preservation and other needs?
- Why isn't KINHC named as the specific and sole beneficiary of these funds? If another tax exempt organization were to qualify, how would KICA decide which organization to support or if supporting both, in what proportions?
- Must monies allocated be used by the receiving organization within a specific period of time? Would there be any restrictions on how the monies are handled or invested prior to their being spent?
- What deed restrictions would be placed on land purchased with KICA funds? Must the land be maintained in its natural state in perpetuity or could a structure, such as a nature center, be built on it? Could the property be “swapped” for another property or sold to purchase other property in the future?

- Who determines which pieces of property will be purchased and will donations be earmarked for the purchase of specific pieces of property?
- Must properties to be purchased with these funds be identified as critical habitat with appropriate supporting data? If so, how will that be done and by whom?
- Should the use of KICA funds be limited strictly to the purchase of property which could otherwise be developed?
- What requirements will be placed on the receiving organization for stewardship of the property once acquired?
- When is it appropriate for a not-for-profit corporation to donate funds to a not-for-profit charitable organization?

Is linking the two provisions of the proposed amendment change the correct approach? Property owners may support one provision enthusiastically but have reservations about the other.

The February 15 meeting will provide the community an opportunity to raise, discuss, and hopefully resolve any concerns about the proposed changes to the Covenants. As a result of that meeting, property owners might change their minds in either direction. As noted in the Annual Meeting packet, if property owners designate a proxy and then register at the March 18 meeting, their proxy assignment will be revoked and they will be issued ballots to cast during that meeting. Those not attending the Annual Meeting who wish to change a vote should contact KICA in writing to request a new proxy. Since such requests might impact KICA staff resources, property owner volunteers could be enlisted to assist with processing the new proxies, as has been done in the past.

KPOG urges property owners unable to attend the meeting to submit their questions to KICA ahead of time and those on Island to attend that evening. KPOG also urges property owners to return their proxies as soon as possible after the February 15 meeting to assure a quorum for the Annual Meeting on March 18.