

REPORT OF CITIZEN VOLUNTEER SUBCOMMITTEE G-2

RECOMMENDATIONS RE: LAWYER

EXECUTIVE SUMMARY

Citizen Volunteer Subcommittee G-2 was asked to examine the following question: "Should different lawyers represent KICA and KRA?" The letter charging the Subcommittee also asked that it consider proposing a specific lawyer. The Subcommittee has concluded that different lawyers should definitely represent KICA and KRA; that in any event the KICA Board should retain separate counsel to represent KICA with respect to issues arising out of the process of transition from developer to property owner control; and that it would be inappropriate for the subcommittee to undertake to identify such counsel.

The focus groups revealed that there is a perception that the Association has not been receiving the benefit of independent legal advice because, since its inception, it has been represented by the same counsel as the developer (KRA). The 1994 Development Agreement stated that "dual majorities" (that is, a majority of the KRA-appointed directors and a majority of the property owner-elected directors) are required to hire and fire counsel. An exhibit to the Development Agreement provides that Trenholm Walker will represent the Association unless (a) four members of the Board agree there is a conflict; (b) the law firm deems itself to have a conflict; or (c) in three specific situations involving buy/sell agreements or adverse litigation.

The Subcommittee believes that these problems could be avoided if KICA were represented by independent counsel and hopes that the directors will decide that the time has come to do so. At a minimum, however, separate counsel should be employed now to represent the Association on all matters (under both the Covenants and the Development Agreement) relating to the transition from developer to property owner control of the Association's Board. The transition rules (and the interrelationship between them) are complex and appear on their face to raise a number of issues on which there is an apparent conflict between the interests of KRA and the non-KRA property owners and on which the Association would benefit from and is entitled to independent legal advice. All members of the Board of Directors have fiduciary obligations to assure that the Association has access to such advice; if the Board is not prepared to act, then present counsel should examine the issues and determine whether it can fairly and ethically represent both KRA and the Association on transition issues.

Finally, the Subcommittee believes that it would be inappropriate for an ad hoc group such as itself to undertake a search for new

counsel, as the active involvement and guidance of members of the Board of Directors is necessary. Any counsel that is selected will be working for the Board, and the Board must have confidence in the attorney and his or her law firm.

Respectfully submitted,
Bill Connellee
Carol Fishman
Hollis Garris

*Buzz Sniffen participated in the subcommittee's deliberations but moved from Kiawah before the report was completed.