

Regarding amendments to the covenants, Article VIII, Section 2 of the covenants, in part:

No amendment to this Declaration shall be made without the consent of the Company until such time as eighty percent (80%) of the cumulative maximum number of lots and dwelling units authorized in Kiawah Island by the Town of Kiawah Island have been sold and conveyed to Type A Members, or until the termination of the Development Agreement between Kiawah Resort Associates, LP and the Town of Kiawah Island entered Oct. 12, 2005, whichever occurs first. (as amended 6-1-2006)

This means that although an amendment may be approved by the required $\frac{3}{4}$ vote of the members at a meeting, it will not be binding or enforceable without the consent of the Company (KRA). Under the transition formula calculated as of Dec. 4, 2009, 77.8% of authorized properties have been sold. The board received a letter from the Company dated Jan. 5, 2010 that informed the board it will not consent to the proposed amendment if it is adopted by the members.

Even so, the member directors on the KICA Board of Directors voted to include this proposal on the annual meeting ballot to save the membership approximately \$20,000, which would be the cost of a special meeting of the members.

The KICA Board of Directors has received an opinion from its outside legal counsel, George Nowack, of Weissman Nowack Curry and Wilco. George is one of the nation's most respected community association attorneys and the board occasionally consults with him. He indicates:

- The amendment as written would be arbitrary since the assumption is that land in a CBRS Unit is more susceptible to storm damage. This assumption is not supported by the website for CBRS or Dr. Tim Kana, president of Coastal Science and Engineering.
- The amendment, if adopted by the members and consented to by the developer, would result in the loss of value of the land owned by others, likely making it incapable of development. The town, not KICA, has the authority to address development within CBRS Units. Such development is approved under town's 2005 Development Agreement.
- Amendment adoption by vote of the members does not validate the effect of the amendment if it shifts benefits or burdens from one member group to another. Non-uniform amendments are generally unenforceable and subject to invalidation in court.
- The proposed amendment conflicts with Article VI, sections 3 and 4, of the Declaration (the covenants). The association must maintain roadways and drainage facilities in a functional and acceptable condition. In addition, the Declaration provides no authority for the board to assess the costs for repair for damages in a CBRS Unit to only those owners within the Unit.
- The proposed amendment could be crafted to be both valid and enforceable only if:
(a) approved by 75% of the votes cast in favor by members at a meeting with the proper quorum, and (b) approved by all owners of the land within CBRS units.

KICA has asked the developer to create a Captain Sam's subassociation to pay for potentially extraordinary infrastructure in the individual property deeds. Still, it is important to remember that KICA cannot compel such action.

KICA would expect to report on vote results in *Digest* as soon as feasible following the meeting.