

Rules, Regulations & People's Lives

By Lou Martel

This article provides the general membership with a more comprehensive and coherent awareness of views within KPOA on the nature and direction of Board policy related to the Appeals and Compliance document, APP-I, issued on 11/7/02. It provides a synopsis of points made in 43 letters that were written to the Board in response to a Board request for member comment on APP-I, 11/7/02. It also includes some comment by the author. Underlines and parenthetical enclosures are made by author for emphasis and clarity.

Abbreviated Description of the Nature of APP-I, 11/7/02

The stated intent of the Board when it issued APP-I was to make clear to the membership that the APP-I was a serious document and that the membership should understand that it was to become serious 'implementation of Board policy -- that policy being "members" obligation to abide by the Project Documents.' To emphasize this, the cover letter stated:

1. The previous KPOA Board (01-2, Board, President Bob Lowe) and the current Board of Directors (02-3 Board, President Ray Kemery) undertook a comprehensive review of an earlier

version of APP-I, last amended 9/16/98.

2. Two former Board presidents reviewed APP-I, and both offered substantive recommendations that have been incorporated.

3. The KPOA General Manager (Brian Belmont), with more than 15 years of experience at Kala Point, contributed to suggestions.

4. The KPOA Attorney (Richard Shattuck), whose specialty is homeowners' associations, twice reviewed the document and recommended changes to strengthen it.

The content of APP-I is perceived as an officious document citing authorities, jurisdictions, articles in the CC&Rs, procedures and consequences for violations that the membership should be aware of and obey. Fines up to \$10,000 were suggested by the Board for violations of regulations, some categorized as "irreparable damage," such as unauthorized limbing of trees, staining of trim, etc. If fines are not paid, the Board is authorized by the Project Documents to pursue legal actions which include placing liens on homes, imposing a late charge of up to 10% per month (120%/year), and interest penalties of at least 18%/year, plus the costs of litigation and attorney's fees. [All of this can culminate in a nonjudicial foreclosure (public auction) of the home to collect all costs of the procedures, which at that point often dwarf the original fine].

The status of APP-I, is that it has been tabled, and the 02-3 Board passed it on to the 03-4 Board for its consideration/action.

Synopsis of Members' Comments on APP-I, 11/7/02

Author reviewed the respondent letters and prepared a synopsis of them given in Table 1 (see insert) by:

1. reading each letter;
2. eliminating duplicative points;
3. consolidating similar points expressing the same thought.

This process resulted in the 30 points in Table 1. The 43 letters were read again, and one or more of the 30 points were associated with specific

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wording in each letter. The number of letters associated with that point was then tabulated and ordered in frequency as shown in Table 1. Worksheets have been retained so the points listed can be reconnected to specific letters.

Table 1 gives a reader a reasonably good perception of the overall content of the respondents. However, there is no substitute for reading the letters in order to understand the flow of reasoning, the depth of emotions, and how the one is connected to the other. The letters for the most part are replete with good insights and expression of personal values. They are thoughtful and earnest. In some there is anger, but in those instances the reasons for that anger are made clear. They are a valuable resource to members, both individually and collectively, in order to better appreciate and understand views within the community.

It should be noted that the 43 respondents are about 10% of the total membership, and they are a special segment because they are those strongly motivated to take issue with the Board “intent” and “content” embodied within APP-I. However, they do that by expressing values and principles that are likely shared by other members but who did not make the effort to write a similar letter. Therefore, this segment of the membership most likely represents a percentage significantly greater than 10%, but are those with strong enough motivation to express their opinions to the Board.

The obvious message from points 1-7 in Table 1 is that most respondents emphatically do not support the Board’s revision to APP-I because they believe the fines are extreme and punitive, that the rules that the fines enforce are unreasonable and don’t make sense, and that this will result in a negative effect on stability and property value. Another message made in points 5-7 is that they do not like the atmosphere of power, control, and threat that is embodied in APP-I, and they feel the Board is not representing their inter-

ests for reasons stated earlier, and also because they want representation of community values -- those exemplified by caring, friendly, respectful neighbors.

Authors Comments

The following is an attempt to frame the issues that seem to be involved in the disconnect between Board intent and content in APP-I, and member reaction as expressed in Table 1.

The overall reaction in 35 of the 43 respondents to APP-I was both a rational and visceral rejection of APP-I, the Board, and the atmosphere in Kala Point. Part of the critical opinion may be misdirected when it is so pointedly aimed at the Board. Part of the critical opinion may be more properly directed at the Project Documents. The Board, when formulating APP-I could say it was simply carrying out its legal duty to enforce the Project Documents. It is also a legal duty of the association (all members) to enforce the Project Documents. Members can legally carry out their duties individually, or collectively by electing members to the Board. The Board (directors acting as a group) has additional legal authority (relative to members) to make rules and regulations and to establish a system of fines and schedules, both of which can be new and different from the Project Documents that existed at the time members signed them.

There is a real question, to say the least, as to whether there is clarity among the general membership, and maybe even some on the Board, as to what the actual intent and substance is of the legalisms that are inherent within the Project Documents. Clarity on this subject could reduce some of the member criticisms, and it could make it worse. However, clarity usually makes matters easier to deal with.

The Communication Problem

Town-hall type meetings were held in the aftermath of APP-I, to promote discussion and to provide input to the Board. Board members stated they had a communication problem. The communication problem was in both directions -- between

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To The Point

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the Board and the members. What was not clear is what the communication problems are. The core of the communication problem could be a need for clarity on the intent and substance of the Project Documents, and very importantly, what flexibilities there are within the legalities of them. The oft heard directive by the Board that “members are obligated to abide by the Project Documents” is not meaningful if said documents are not clear, in layman terms, not legal terms.

The following are issues that need to be clarified in communications between the members and the Board (the what in the communications problem).

They are posed as questions for consideration by members and by the Board.

1. There is a need to clarify the extent the Board represents the membership. Is it only to the extent that member interests coincide with property value/business-oriented interests?

2. What is the meaning of the words “quality of life” as stated in the CC&Rs? Does it correspond to the definition given in the Articles of Incorporation of the Kala Point swim and Racquet Club (Article VI) which are essentially country club values, or does it mean “quality of life” as defined in the dictionary, which is “the degree of enjoyment and satisfaction experienced in everyday life, as opposed to financial and material well being.”

3. The authority of the Board is to manage the affairs of the association. Is there a need to clarify whether the term manage always means control? And, is there a need for the community to understand that manage does not mean govern?

4. Is there a need to clarify if and when Washington State Law 64.38 “Homeowners Association” will be fully incorporated into KPOA Project Documents?

5. Is there a need to clarify whether the term “reasonableness” and “flexibility” can be incorporated within the legalese of the KPOA documents. The Community Association Institute (CAI), of which KPOA is a member, has advocated such use in order to avoid problems, such as those ex-

pressed by members in the 43 letters, that have become rampant in HOAs all over the country.

6. Is there a need to clarify if the words “fair to the individual” (as is the case in secular law) can be applied within the legalese of the Project Documents when the Board is contemplating and enforcing fine schedules. In APP-I, the word “fairly” is used by the Board to apply only to the application of the machinery of the Project Documents.

7. Should the membership expect a continuation of the apparent trend of the increasing of KPOA power and control (and potentially the abuse of State and Federal legal powers that safeguard property and civil rights of individuals) by the Board and its committees? Should the Board take steps to curb or reverse that trend (an action that would be supported by most of the 43 respondents to APP-I)?

The list of issues above are those viewed by the author that need clarification. Views of the issues, different from those above, as viewed by the Board, need to be added. In order for communications to be clear in regard to such issues, they need to be in writing by the Board, and they need to be substantive and void of spin and platitudes.

A final comment

There was one member comment that stood out from many other good comments. It summarized in one sentence what we all need to keep in mind as this situation in Kala Point is dealt with. It was poignant in its simplicity, but it said it all:

PLEASE REMEMBER THE RULES YOU ARE MAKING AFFECT PEOPLE’S LIVES!”

Editor’s Note: Thank you Lou for this in-depth analysis of the community reaction to the proposed changes in APP-I, 11/7/02. As the new Board takes up this issue again, it is important for the community opinions to be re-aired.

It is interesting to note that a fine of \$10,000 would only be levied for a crime the level of a felony in the outside world.

To The Point

Table 1

Homeowners Comments on Boards' Revisions to APP-I

Point Number	Point Made By Residents in Letters	# of letters making same point
1	Emphatically do not support Board action.	35
2	Fines are extreme and punitive.	35
3	Too many rules are unreasonable and don't make sense.	20
4	Negative effect on saleability and property value.	16
5	Atmosphere of power, control and threat.	12
6	Board is not representing residents interest.	12
7	Want community values; caring, friendly, respectful neighbors.	12
8	Fines are being handled poorly. Alternatives need to be considered.	7
9	Board is overbearing, arrogant and abusing authority.	8
10	Boards' revisions in APP-I are provoking legal action.	8
11	APP-I is complex and legalistic.	8
12	Overbearing attitude of Architectural/Tree Committees.	8
13	Have concern about ability of some residents to pay large fines.	8
14	Board & committee actions are causing bad image of KP to outside.	8
15	Residents are being driven out.	6
16	Board is out of touch with community.	6
17	Homeowners rights are being ignored.	6
18	Support Board actions	5
19	Rules and regulations are too intrusive.	4
20	Board does not listen to or hear residents.	4
21	Board is not acting for community and is unduly influenced by a few.	4
22	Board is perceived as being unfair and inconsistent.	5
23	Board shows lack of respect in response to residents.	4
24	Tone of APP-I is unfriendly, oppressive, aggressive, controlling.	3
25	No explanation or data base given for need to increase each fine.	4
26	KP rules and regulations have gotten worse over time.	5
27	Large fines gives Board too much power, leads to resistance and resentment.	3
28	There is an atmosphere of mutual distrust between Board and residents.	2
29	Board's revisions are likely to be in noncompliance with Washington State law.	2
30	High fines at back end of process is wrong focus.	1