

## Myth of 'Privatopia'

is being reprinted here with the permission of the original writer and publisher. Even though the article discusses communities in and around San Francisco, much of what is discussed relates well to Kala Point and current conditions here.

Commentary is on page 2, in Swiftly Speaking.

## The Myth of 'Privatopia' Do private residential governments mean the end of the American dream?

By Carol Lloyd, special to SF Gate

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Last week, I reported on the convoluted and sometimes baffling war over the fate of the Westlake Subdivision Improvement Association, the homeowners association (HOA) for 6,500 homes in Daly City. At the heart of the struggle was U. Deutsch, an elderly German-born woman who has spent a good portion of the last 30 years working to dismantle an organization she considers fraudulent and unjust.

Although the facts were on her side, I couldn't help wondering whether Deutsch — after carrying the torch for so long, engaging in countless lawsuits and spending thousands of dollars of her own money to rid her neighborhood of an intrusive HOA — had not become a little, well, too focused. This is the temptation with such stories about homeowners-association wars: that one will interpret them as tales of personalities (be they high minded or mean spirited), of people who have a little too much time on their hands.

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## Using a Generator During Power Outages

If you are purchasing a generator make sure you get one listed with the Underwriter's Laboratory (UL) or Factory Mutual (FM). Look to the labels on lighting, appliances, and equipment you plan to connect to the generator to determine the amount of power that will be needed.

Follow the directions supplied with your generator. Never use portable generators indoors, or in a garage. Adequate ventilation is necessary when running the generator. Proper refueling as outlined in the owner's manual, must be carefully followed. Make sure you have properly working Carbon Monoxide (CO) alarms inside your home.

Allow your generator to cool down before refueling. You must store extra generator fuel in an approved safety can, outdoors in a locked shed. Do not store fuel in a garage, basement, or anywhere inside a home. Vapors can be released that may cause illness and are a fire hazard.

Connect the equipment you want to power directly to the outlets on the generator, not to your home's electrical service. Nonindustrial generators do not supply enough amperage to supply

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*Swiftly Speaking*

## Going the Extra Mile for Kala Point

By Judie Lewis, Editor

The article "The Myth of Privatopia," that begins on page 1 and follows throughout this issue of To The Point serves as a wake-up call. Many in Kala Point who had difficulties with the rule makers here thought they were alone. Often times they were shunned for months at a time or even years.

When this paper started in May, 2002, many KP residents commented about this. As time has gone on, it has become apparent that there are many Kala residents who have shared such problems. Plus, as research continued it appeared that the power issues of communities with CC&Rs are nationwide with many court cases pending where residents resorted to suing their community.

Perhaps the most startling thing about the article is that this situation is so pervasive that a whole book has been written on the subject - and states are beginning to enact legislation to curtail the dictatorial powers that create the issues.

We have been very pleased that we seem to have a Board that is a big improvement over the previous one. There is a different tone to the meetings. And, there does seem to be a genuine effort to listen to the residents views.

However, the comment that "even when an HOA is well run and filled with great people, adds McKenzie, "it's only one election away from a disaster," should concern, if not scare, any of us.

It seems that we need a more permanent repair for Kala Point. I would suggest we form a community congress to write a "Kala Point Residents Bill of Rights."

Ideas could be collected from residents to be included. Some I have heard that seem of worth include: a specific list of just how far any committee can go in restricting what we do with our own purchased properties; that any Kala Point resident has the right to be a member of any committee that is a sub of the board as long as they attend at least 90% of the meetings. This later one would stop the powers that be from loading committees with "like-minded" people and dominating the rest of us. If you have a serious interest, you could attend regularly and become a voting partner of the committee that would affect that interest. I think it would be likely that those who have lost their views might do a better job of regaining them than those who currently wish to restrict this.

It is time for a change!! The group of residents feeling disenfranchised that are meeting with Jay Garthwaite, his wife and the rest of us may want to add to this list. It should be short and concise.

If you have comments, respond to [lewis@olympus.net](mailto:lewis@olympus.net); or you may call the editor at 379-8961, with comments to share.

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## “HOA” continued from page 1

But Evan McKenzie, author of “Privatopia: Homeowners Associations and the Rise of Residential Private Government,” has heard too many such stories to reduce them to quaint battles between obsessed busybodies. As an attorney who spent six years representing HOAs in California, he had a privileged insider’s view of a burgeoning and little-understood industry. And, as an associate professor of political science at the University of Illinois at Chicago, he was one of the first academics to grapple with how the rise of such governing organizations is reshaping our neighborhoods.

His scholarly book, which became the equivalent of “Silent Spring” for homeowners disgruntled with their HOAs, attracted a popular following. Since its publication in 1996, he’s received scores of letters from homeowners driven to the brink. “You think, ‘Wow, these people are eccentric,’” he says. “They get wrapped up in some petty struggle. It drives them nuts. But it’s these issues that make people crazy.”

### What precisely are “these issues”?

Freedom of expression, the right to privacy, the right to keep the home you worked a lifetime to buy. In other words, the loss of that prize most of these people thought they had already achieved: the American dream.

Now that property values have risen so much that many hardworking families can’t afford a traditional domicile, they buy the closest approximation they can pay for: a condo, a townhouse or a “single-family home” in a new “planned development.” If the complex has any shared property, such as landscaped grounds, a pool or even a small strip of trees, then it’s by definition a common-interest development (CID).

Sometimes, these homes look no different from the homes down the street, but they exist in a different legal framework: Instead of being governed by local county or city laws enforced by government employees, they follow the laws of  
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## We Get Letters

**Preface:** In early December, Jay and Susan Garthwaite, KP homeowners and (presently—like scores of others) part-time residents, published a letter of concern about KPOA governance initiatives, member representation and association management, proposed new community rules, and stiff new non-compliance financial penalties. On December 6th they hosted a meeting of concerned KPOA membership at their home, attended by nearly forty people. Organized now as KALA POINT OWNERS (KPO), a website has been established [www.kpowners.com](http://www.kpowners.com) and a schedule of continuing monthly evening meetings has been announced to advance an agenda of homeowners association (HOA) reform. The next KPO meeting is set for 6:30pm January 24th and thereafter on Fridays just prior to regularly scheduled KPOA meetings on the third Tuesday of each month. Meetings will be held at the Chemicum Tri-Area Community Center.

**TTP Editor Judie Lewis;** Please allow us to further inform your readers about the objectives, interests, and plans of Kala Point Owners (KPO). Kala Point Owners (KPO) is a reform movement of land and homeowners at Kala Point, all of whom are automatically members of KPOA, assessed for KPOA purposes, and (to some extent) legitimately subject to KPOA rules and regulations by  
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## “Letters” continued from page 3

virtue of CC&Rs. KPOA, as a homeowners association, organized as a non-profit corporation, has an obligation to serve its membership...ALL membership, whether full or part-time residents, owners of undeveloped land, working or retired and whether committee active or not. We don't think that is happening, and we are dedicated to changing the situation.

Most of us active in the KPO reform movement are dissatisfied in many respects with the focus, posture, approach and actions of KPOA. Despite ever-rising annual assessments on top of increasing county taxes, we feel intentionally excluded from it's activities, underserved by its management and targeted by many of its over-zealous “committee enforcement activities.” We are now actively and constructively engaged in seeking change. If change cannot be accomplished with the present leadership and board we will work through the established organizational process to elect different leadership and governance and hire member-responsive management.

Following distribution of our open letter, Susan and I met for two hours on December 14 with KPOA President Ray Kemery, Dan Holme and Brian Belmont to discuss our concerns. We expressed these four main points:

Many are powerfully offended by a board pos-  
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## “HOA” continued from page 3

their “CC&Rs,” which are enforced by their HOAs. Thus, the association may write laws about the sort of flowers you can plant in your front lawn and whether you can remodel your house. According to McKenzie, the rise of HOA-governed CIDs is changing private-property rights, civil rights and the responsibilities of local government.

What's more ominous, now that more than 80 percent of new housing in the country is being built within CIDs, is the professional industries that have grown around them — complete with their own lobbying groups — eager to make sure government oversight remains at a minimum.

To help me understand how homeowners associations have evolved, McKenzie offers a thumbnail history. “The original reason for all HOAs was to enforce race-restrictive covenants,” he says, explaining that such organizations predate the invention of the CID, with its shared responsibility to maintain property. “But in the 1960s and '70s, as land prices were getting more expensive, developers started creating [CIDs] in order to create more density and therefore increase profitability.”

In devising CIDs, developers managed to build more houses on less land — avoiding local density codes — through creation of “private communities” with their own roads and utilities infrastructure. “They build a shared infrastructure with common utility lines so the physical infrastructure is a lot cheaper,” explains McKenzie. “Then they build private streets, which are very narrow and not as deep, so they're cheaper streets. So they need a lot of repairs.”

But who will take care of the infrastructure and the roads? Not the city, of course, because these are private communities. Instead, the HOA, run by volunteer homeowners with help from profession property managers and lawyers, must levy assessments from homeowners to pay for the cost of maintaining the property. With such an arrangement, developers get the best of both

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## Kala Kwips

By our shy but humorous KP resident

### Diet Tips for the New Year

Now that the added holiday pounds are literally upon us, this "Atkins Alternative" may be just the regimen for you:

Q I've heard that cardiovascular exercise can prolong life. Is this true?

A Your heart is only good for so many beats, and that's it...don't waste them on exercise. Everything wears out eventually. Speeding up your heart will not make you live longer; that's like saying you can extend the life of your car by driving faster. Want to live longer? Take a nap.

Q Should I cut down on meat and eat more fruits and vegetables?

A You must grasp logistical efficiencies. What does a cow eat? Hay and corn. And, what are these? Vegetables. So a steak is nothing more than an efficient mechanism of delivering vegetables to your system. Need grain? Eat chicken. And a pork chop can give you 100% of your recommended daily allowance of vegetable slop.

Q Is beer or wine bad for me?

A Look, it goes to the earlier point about fruits and vegetables. As we all know, scientists divide everything in the world into 3 categories: animal, mineral and vegetable. We all know that beer and wine are not animals, and they are not on the periodic table of elements. So, that only leaves one thing, right? My advice: have a burger and a beer and enjoy your liquid vegetables.

Q How can I calculate my body/fat ratio?

A Well, if you have a body, and you have body fat, your ratio is 1:1. If you have 2 bodies, your ratio is 2:1.

Q What are some of the advantages of participating in a regular exercise program?

A Can't think of a single one. My philosophy is "No Pain: GOOD!"

Q Aren't fried foods bad for you?

A You're not listening. Foods are fried these days in vegetable oil. In fact, they're permeated in it. How could getting more vegetables be bad for you?

Q What's the secret to healthier eating?

A Thicker gravy.

Q Will sit-ups help prevent me from getting a little soft around the middle?

A Definitely not! When you exercise a muscle it gets bigger. You should only be doing sit-ups if you want a bigger stomach.

Q Is chocolate bad for me?

A Are you crazy? HELLO...cocoa beans...another vegetable!!! It's the best feel-good around!

Well, I hope this has cleared up any misconceptions you may have had about food and diets. Have a cookie...flour is a veggie. One more thing...when life hands you lemons, ask for a bottle of tequila and salt.

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## “HOA” continued from page 4

worlds: an escape from city planning ordinances that restrict their profits, and an entity that inherits the results of their cost cutting.

Sometimes, what looks like a developer’s enlightened benevolence reveals itself to be egregious self-interest. Developers maximize usable land, then donate “open space” to the HOA to maintain, marketing it as one of the benefits to the community. Such open space can turn out to be more of a liability than an asset. McKenzie recalls one case in which the “open space” turned out to be, as he describes it, “almost a Superfund site.”

With these conditions, why do Americans keep flocking to CIDs? In part, it’s because if you want a new home, there is little else to choose from. But it’s also because these developments offer a taste of the American dream that’s ideal for a fraction of the cost of a discrete single-family home. “Instead of everyone getting a big yard with a swimming pool, developers figured out how to do the same thing,” explains McKenzie. “They build amenity-rich developments with golf courses, swimming pools, game rooms — all exclusively for the homeowners.” These features, says McKenzie, offer the promise of class and racial exclusivity without breaking fair-housing laws.

The problems in these private communities tend to erupt a few years down the line, though, after the developers have sold off the last of the houses and the HOA has taken over. Once the statute of limitations for suing the developer — usually one to three years — has expired, the association is on its own. Suddenly, roofs begin to leak, streets break down and the HOA realizes it needs to begin serious repairs.

“When the developers leave, the incoming association directors often find that they’re ‘under-reserved,’” says McKenzie. “The developers have almost always set the fees too low — they set them low to sell homes — so the HOA begins raising fees. And sometimes the assessments are huge — \$600 a month.”

At other times, an expense is so big and so

urgent that the HOA must levy a “special assessment” to pay for a new roof or a rotting deck. “So the board votes for a special assessment of, say, \$10,000 [per homeowner]. And if you can’t pay, they’ll slap a lien on your home. The HOA has a fiduciary duty to maintain the property.”

Why would cities allow developers to circumvent planning ordinances and create communities that may not be up to the task of maintaining their own infrastructure?

“The cities get something for nothing,” says McKenzie. “They still get the property taxes without building or maintaining the infrastructure, the pipes, the streets, the parks. Essentially, it’s a form of double taxation.” Although New Jersey recently passed a law compelling cities to provide homeowners in private communities with a snow-removal and leaf-removal rebate (since they don’t use those city services), most states have been slow to enact such legislation.

In framing the dangers of CIDs, McKenzie is careful not to vilify HOA directors. “Most of them are salt-of-the-earth people. They do it because they know it needs to be done,” he says. “But all you need is one or two power-hungry control freaks on a board to create a lot of problems.” Such individuals can use a HOA for a number of ulterior reasons: monetary gains (by providing business to close associates and then receiving kickbacks), political power (using their position as a launching pad for positions in city politics) or personal vendettas (suddenly, you have a supposedly valid reason to spy on your neighbors.)

He says that, unlike with city governments, which ostensibly must follow democratic laws of governance, HOAs are woefully unregulated. Sometimes the boards simply vote themselves into perpetual power, since they can prevent opponents from voting or running for election by suggesting that the upstarts are not in good standing with the HOA. Or, as McKenzie put it, “These elections can make Broward County look

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## February Events Calendar

By Bev Green, Events Coordinator

- Jan 31-Feb 2- PT Winter Chamber Music Fest.  
Feb. 1-28...Natural History Exhibit of Puget Sound, Fort Worden SP.  
Feb. 2,9,16,23...Sundays at One Poetry Series, Rose Theater, PT.  
Feb. 2...Body Mind Spirit Expo, JC Fairgrounds.  
Feb. 5...Mongolia & Western China via the Back Streets, PT Comm Ctr.  
Feb. 8...Swans School Ball & Silent Auction, JC Fairgrounds.  
Feb. 12...Greenland, the Land at the Top of the World, PT Comm Ctr.  
Feb. 14...Valentines Day, Harbormaster at The Resort at Ludlow Bay.  
Feb. 15...Red Wines & Chocolates, All winery loop wineries, PT.  
Feb. 19...Spirited Waters, PT Comm Ctr.  
Feb. 26...The Forgotten Isles of the Indonesian Archipelago, PT Comm Ctr.

For further information, call the Port Townsend Visitor Inform. Ctr., 385- 2722; Marine Science Ctr., 385-5582; Centrum, 385-3102;or Jefferson Cty. Library, 385-6544. Web site [www.ptguide.com](http://www.ptguide.com).

## Centrum Presents Winter Chamber Music Festival

Centrum launches its 30th Anniversary Year with a three-day celebration of the living tradition of chamber music, January 31-February 2, 2003. The Chamber Music Festival showcases Centrum's 30th Anniversary Ensemble-in-Residence, The Cypress String Quartet, with violist David Harding and clarinetist Gregg Miller.

The American composer Dan Coleman is the Festival's special guest. Performances are held at the Joseph F. Wheeler Theatre at historic Fort



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Worden State Park: Friday, January 31, 7:30 pm, Selections from Dvorak's Cypresses, Berg Lyric Suite, and Debussy String Quartet; Saturday, February 1, 7:30 pm, Haydn Quartet in F minor, Opus 55, no. 2, Coleman quartet ricercare, and Brahms Quintet in G, Opus 111; Sunday, February 2, 2:00 pm, Suk Ballad and Barcarolle, Coleman Clarinet Quintet, and Beethoven String Quartet in C, Opus 59, no. 3.

The public is encouraged to experience the living tradition firsthand. A post-concert Question and Answer session with the artists will be held immediately following the Friday evening concert. A free, pre-concert lecture with composer Dan Coleman and KING-FM's Tom Dahlstrom takes place on Sunday, February 2, from 12:45 p.m. to 1:30 p.m. in the Joseph F. Wheeler Theater.

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## “Generators” cont’d from page 8

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This information was prepared from materials from the American Red Cross, and the National Fire Protection Association.

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## “Letters” continued from page 4

ture that assumes that management, committee heads and directors know what is best for us all, and that they need not really seek nor consider the perspectives and interests of the entire diverse membership that pays the way of the association. Scores of owners feel excluded, disenfranchised, and angry. Most report a powerful shift to these feelings over the last one to three years.

Many members believe that the actual empowerment of the CC&R's is (and has been) grossly exceeded through administrative extension well beyond their actual empowerment, to the point of entirely inappropriate intrusion into property owner rights to quiet enjoyment of their property and lives.

Many believe there is a powerful KPOA-centric agenda of “cleansing” the community of those perceived by some as “not right for Kala Point” through exclusion tactics and application of punitive powers of the HOA. Indeed, we have heard directly from now sixteen past or present owners that have either sold out or are actively considering doing so due to their disgust with this.

Many believe that association business needs to be more openly conducted with a clear intent to actually encourage direct participation of ALL members. Examples: 1) Board meeting times need to be adjusted to weekends so that working people and part-time residents can become involved. 2) Obstacles to obtaining association information must be removed. 3) Any and all conduct of association business, including all deliberations, MUST be openly conducted in strict accord with the governing documents. 4) Postings, resources and notices need to be up-to-date, truly informative, timely and complete. 5) Board minutes need to be far more detailed, complete with residents' comments and informative.

While the meeting was frank and polite, we left feeling that current KPOA leadership does not share our concerns.

The KPO reform agenda echoes similar HOA-reform efforts now underway within literally thousands of similar organizations nationwide. **Jay & Susan Garthwaite Jay.Suz@cablespeed.com**

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## **FYI Notice: Of January 23 Seminar r.e: Architectural & Tree Committee Actions**

I thought you would be interested to know that in connection with the public forum on the Architectural and Tree Committees next week, there are only a meager submission of questions.

This forum is not a Board sponsored forum despite the misleading statement in the Kala Pointer. It is sponsored by an independent committee. Somehow the official notice from the Committee was lost and the editor of the Kala Pointer wrongfully assumed it was a Board sponsored affair.

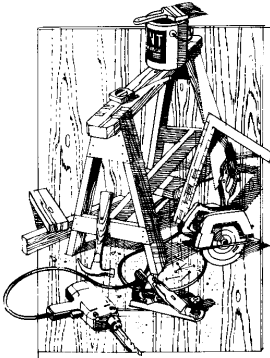
It is felt that for the most orderly presentation, people with questions should submit them ahead (to Tony Costa, [ascosta@cablespeed.com](mailto:ascosta@cablespeed.com)). The speakers at the meeting will be informed of these questions so that they can include the answers in their presentations. This worked extremely well in the water forum of last fall. Judie Lewis was quite involved in the preparations of that meeting and it was generally considered a successful affair.

I think it would be quite helpful if you can do anything to encourage attendance at this meeting and the submission of questions. Of course there is an opportunity to ask questions from the floor but that does drag out the meeting.

Sincerely, Robert Bowman

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### “HOA” continued from page 6

like the epitome of fair voting.”

Even meeting protocol is fraught with continued improprieties. “I’ve seen hilarious things,” says McKenzie, such as “where the meeting minutes say that the director thanked so and so for his comments, but what actually happened was that the director said, ‘Sit down and shut up.’ They are banana republics.”

Even when an HOA is well run and filled with great people, adds McKenzie, “it’s only one election away from a disaster.”

Sometimes, living in one of these communities means losing certain free-speech rights. Some HOAs prohibit putting political signs in your window or flying the flag. Others curtail privacy rights with ordinances about improper behavior.

One book of HOA horror stories tells of an elderly woman being fined for kissing her elderly boyfriend in the car outside her home.

Such petty disputes over flag flying and senior necking can turn serious if the transgression collides with a vindictive HOA member or, worse, an avaricious lawyer. It can even lead to people losing their homes.

According to McKenzie, there is now an entire cottage industry of lawyers and property managers who feed off such liens and fees, offering their services to the generally inexperienced HOAs. As an HOA lawyer, McKenzie watched the industry grow from a small group of specialists to big business. Over the years, he saw that HOA law seemed to attract two kinds of lawyers. “The first are those that offer general counsel, the HOAs need,” says McKenzie “the second type is the collections lawyers, brought in to collect unpaid assessments. They say to the HOA, ‘I will represent you, and you don’t have to pay me, just so long as I’m given a free hand in how I do my work.’”

These lawyers take a “collection-agency posture,” he says, putting liens on property when homeowners are 10 days late paying an assessment. “Every letter has a price tag — and if the homeowners don’t pay, you slap them with a lien.” Although the assessment is perhaps for only a few hundred dollars, the lien may total \$5,000 or \$10,000 — and, in order to clear their title, the homeowners must pay not only the



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assessment but the lien as well. If they cannot do so, McKenzie says, they can lose their home through a form of foreclosure unmediated by the courts or any local government.

"These lawyers are so rapacious that it's just shocking," says McKenzie, adding that no laws govern their fees — they can basically charge whatever they want. "It's up to the homeowner to file an action with the court, and if you don't file a lawsuit, you are out of your house before you can say boo," he adds.

The worst part about the whole process, says McKenzie, is that it's legal, a fully institutionalized practice: "The bar even offers workshops on the process."

California's state government is reviewing the laws governing CIDs, and McKenzie remains hopeful that states will begin legislating reforms, regulating such issues as how HOAs are governed and how much their lawyers can be paid. But, already, there is a powerful trade association, the Community Association Institute, which tends to resist laws that increase government oversight.

Government might also help prevent some of the limitations on civil rights with a simple declaration. McKenzie says, "We need a more general statement from the states saying that you have basic rights as a homeowner — a bill of rights for owners — that even if we have privatized our neighborhoods, we can't privatize our constitutional rights."

But, for now, many homeowners continue to buy new homes in CIDs without knowing hide nor hair about exactly what they are gaining and what they are losing.

"A lot of times, when people buy homes [with HOAs], they don't know what they are signing away," says McKenzie. "It's all justified by contract. You signed, so you consented to it. But people have not really meaningfully consented to be governed by HOAs. Most haven't read the covenants — they don't know what they mean."

**Boy!!! Does This Sound Familiar.  
For commentary, turn to page 2**

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If you would like to submit material for this publication or have comments, call Judie Lewis at, 379-8961; or e-mail to [lewis@olympus.net](mailto:lewis@olympus.net).

**Deadline for each issue is the 20th of each month.** All material must be submitted in writing.

Letters to the editor are still welcome. Please follow the guidelines of being respectful to others' views, and no names please other than yours.

## Missing Our Neighbors

By Judie Lewis

Often we have get well wishes and condolences presented in this space. We do still wish our less healthy neighbors a speedy recovery. But, this time the condolences go to our community. We just lost Marty Terzieff. Last spring we said good-bye to his wife Helen. These two are a great loss to Kala Point. We surely will miss them.

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# To The Point

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## Kala Point Calendar February 2003

**Feb. 3+** - Exercise for ladies, every Mon., Wed. & Fri., & Coed exercise, every Tues. & Thurs. from 9 to 10 a.m., clubhouse.

**Feb. 3, 10, 17, & 24** - Play Bridge, every Monday, 11:30, clubhouse. All welcome.

**Feb. 4 & 18** - Mixed Nuts Games, every 1 & 3 Tuesday evenings, call 379-8961 for place.

**Feb. 7, 14, 21 & 28** - TGIF, held Friday evenings, 5:30 p.m., clubhouse. All KPOA

**Feb. 10** - Kala Point Readers' Club, 10 a.m., clubhouse.

**Feb. 11** - PC Computer Users' Group, 1:30 p.m., clubhouse. **Mac users group** meets 2nd Thursday (Feb 13) at Tri-County Community Center, 7 p.m.

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## Board Meeting

**Tuesday, February 18**

**1:30 p.m. at the Clubhouse.**

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