

The Community's Right to Develop Rhett's Bluff

April 9, 2015

There has been much discussion in the community regarding whether KICA has the right to build a community center on its 6.2-acre property at Rhett's Bluff. A few members, under the name of the Kiawah Boat Landing Preservation Committee ("the committee") have vocally disputed KICA's legal right to do so, and have stated that KICA is acting inappropriately by even considering development. A timeline and relevant facts about the property are summarized below:

The property was conveyed to KICA by the developer in 1994 by a deed which included a restriction that the property was to remain a "private Kiawah Island community boat landing with related facilities."

The committee maintains that this language precludes any development. However, the deed states the property is to be a boat landing and something else. It doesn't say the property is to be only a boat landing.

The committee states, "The landing acreage is to be in a state of nature in perpetuity." Neither the deed, nor anything else in the conveyance, contains such language. It is critical to understand that the developer did convey other properties to KICA with stipulations that they could not be developed. Those conveyances contained very explicit and restrictive language that is not contained in the Rhett's Bluff conveyance. It is inconceivable to think the developer simply overlooked such language, and that the committee can now attribute such intent. The common sense conclusion is that the property was intended to include a boat landing and something else.

In determining what that "something else" might be, there are a number of relevant facts, and significant historical perspective:

- The developer transferred the property to KICA as "Common Property." This is a defined term in the KICA covenants (Article I (r)), which specifically means the property is available to all KICA members and their guests.
- The Development Agreement required that this property be conveyed as "open space." This is also a defined term in the community's general covenants, which states that land so designated "...may be employed in the construction, maintenance and enjoyment of ...social, recreational and community buildings."
- The property was conveyed with a zoning designation of Parks and Recreation, which is identical to the Sandcastle zoning and many other locations around the island with similar, but more intense, use than what is contemplated for Rhett's Bluff.

History:

The transcript of a KICA board meeting held in April 1995, just months after the conveyance, evidences clear understanding of the property's potential uses. A Rhett's Bluff resident spoke to the board and questioned KRA's refusal to include additional restrictive language in the conveyance deed in his individual property. Then-board member and KRA partner (and now committee member) Leonard Long replied, "Sounds like we knew what our position was." He articulated an intentional policy not to provide any special interest in the Rhett's Bluff boat landing property to individuals who bought property in the Rhett's Bluff neighborhood. KIRE's then-Director of Sales and KICA board member Pat McKinney reinforced this policy at the same meeting by stating, "During the sales process, we were asked many times by Rhett's Bluff owners how we were going to restrict the Rhett's Bluff Landing... such as not let it be overrun with property owners elsewhere on the island...and we said, you know, we weren't. That was a point. If you didn't like that, the fact that that was in effect a gathering area for property owners island-wide, then that may not be a place you ought to be purchasing." The record is unmistakably clear that the developer conveyed the Rhett's Bluff boat landing to KICA as a social gathering space for all KICA members. The committee's message that KICA is disadvantaging the Rhett's Bluff community is inconsistent with this historical fact.

At that same April 1995 board meeting, Long advocated for fishing charters to operate from KICA's property landing to "be limited to Kiawah property owners who want access to the river." He further opined "...it is no different, Laura, than people we give a decal to use our roads... to do other things within our common areas that are a value and benefit to property owners." Long properly states the position that the Rhett's Bluff property was a common area for the benefit of all property owners.

The history of planned usage of the Rhett's Bluff common property also provides insight into what the "something else" in the conveyance deed might be. A January 1990 survey shows the boat landing as .849 acres with the surrounding property depicted as "Future Development." The developer recorded covenants to allow "current and future improvements" as well as "the right to create a club."

In May 1990 the developer met to discuss a "Rhett's Bluff River Club" with the objective of creating "a neighborhood and property-owner water-oriented recreational center" and "provide a minimal commercial facility; bait, tackle, ice, convenience food." Just eight days later, Long authored a memo suggesting construction of an open air structure with an "enclosed space for a snack bar and general bar area for parties."

In 1991, the developer built the existing pavilion and began using it as a community gathering space. In June 1991, Long set forth policies for the boat landing. He wrote "I don't think we should give credence to the idea that the boat launch and dock are available exclusively to property owners, etc. because we should maintain the flexibility and discretion to allow limited

resort guests.” He further stated “I think somewhere we need to at least subtly make clear that we provided property owners by covenant the right to put in their boats in a limited area at the landing, but I don’t want to leave the impression that they have the right to insist upon full use of all parking areas, etc. located at Rhett’s Bluff for boating purposes.” He then outlined the possibility of building a club on the site and ensuring any regulations at the site allow for this possibility.

The developer conveyed the pavilion and surrounding property to KICA in 1994. Intended to be a “recreational center,” it is clear that the developer was considering additional development on the site. One cannot logically deduce that they would have conveyed property to KICA, for the benefit of property owners, and then restricted KICA from adding amenities that it (the developer) was itself considering. This conclusion is further supported by the lack of specific restrictions in the conveyance deed. If the developer wanted specific restrictions, it would have included that language. A more logical conclusion is that the then-developer used broad and “subtle” language in the deed to allow flexibility in future development, particularly since it retained usage rights to the site for its own purposes.

Summary

The pattern of historical use, recorded accounts and property designation all support KICA’s belief that it has the right to build a community center for the benefit of all property owners on its Rhett’s Bluff property. Conversely, there is nothing in the record to support the committee’s position that the site cannot be developed or that the individual properties in Rhett’s Bluff enjoy rights or protections that are greater than any other Kiawah property owner.

Members of the community should decide for themselves how to interpret the facts, and how to judge the objectivity of the parties’ and their positions. KICA’s elected volunteer board has a diverse composition: Kiawah Island Club Members, Governors’ Club Members, first gate/second gate, full time/part time, and homes/villas. They live all over the island and have diverse interests, and they’ve unanimously concluded that the facts support this endeavor. It’s also important to note that others with long time involvement in the successful development of Kiawah are supportive of KICA’s efforts. Mark Permar, who was a land planner for the developer and worked on club plans for Rhett’s Bluff in the 1990s, has worked with KICA in developing its Amenity Master Plan. Buddy Darby, who was a principal in the development company at the time of the Rhett’s Bluff conveyance and served as its CEO for many years, advocates KICA’s plan.

Ultimately, an independent third party may have to adjudicate the disagreement. It would be unfortunate, but certainly in everyone’s interest to resolve the question once and for all.