

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES

<b>FILED</b>	
<small>Department of Business and Professional Regulation Deputy Agency Clerk</small>	
CLERK	Brandon Nichols
Date	<b>11/15/2013</b>
File #	<b>2013-06827</b>

IN RE: PETITION FOR DECLARATORY STATEMENT

Docket No. 2013021709

KINGS POINT RECREATION  
CORPORATION, INC.,

**DS 2013-041**

DECLARATORY STATEMENT

The Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes ("the Division") issues this Declaratory Statement under section 120.565, Florida Statutes.

PRELIMINARY STATEMENT

The Division received a Petition for Declaratory Statement ("the Petition") May 17, 2013, from Kings Point Recreation Corporation, Inc ("KPRC"), seeking an opinion as to the applicability of section 718.103(2), Florida Statutes, to KPRC.

The Division sent KPRC a letter May 21, 2013, acknowledging receipt of the Petition and informing KPRC that the Division is required to provide notice to all condominium subassociations and the four umbrella organizations that compose the board of directors of KPRC of the receipt of the petition. The letter requested that KPRC provide the Division a list of the subassociations and the address for mailing notice, or to serve a copy of the Petition on all such entities and provide the Division with a certificate of service for having done so.

Notice of receipt of the petition was published in the May 22, 2013, issue of the *Florida Administrative Register*.

On June 3, 2013, KPRC filed a Certificate of Notice stating that it had provided notice of the Petition to the 91 condominium associations and to the 4 umbrella organizations identified in the Petition and informing them that if they wished to intervene that they may do so.

On June 12, 2013, Martin Koitz ("Koitz"), the owner of a condominium located in the Flanders N Condominium located in the Kings Point Community, filed a Motion to Intervene In Petition For Declaratory Statement. On June 12, 2013, a Joint Motion to Intervene and Motion For Extension of Time to Present Legal Argument was filed by Capri C Association, Inc., Flanders J Association, Inc., Waterford Condominium Association, Inc., Seville Area Condominium Association, Inc., Valencia Area Condominium Association, Inc., Flanders Condominium Association, Inc., Brittany Condominium Association, Inc. and Monaco Condominium Association, Inc. ("the Condominium Intervenors").

By order dated June 28, 2013, the presiding officer assigned to this matter granted Koitz's and the Condominium Intervenors' requests to intervene. The order also granted the Condominium Intervenors' request for an extension of time until June 21, 2013 to present legal argument in response to the Petition. Koitz and the Condominium Intervenors filed responses on June 20 and 21, 2013, respectively. On July 1, 2013, KPRC filed a response to Koitz's response to the Petition.

Upon the request of KPRC, by order dated August 8, 2013, this matter was extended beyond the 90-day requirement of section 120.565, Florida Statutes. The order

also permitted Koitz to file a motion to dismiss, which he did on August 30, 2013. On September 11, 2013, the Condominium Intervenors filed a response to the motion, and on September 13, 2013, KPRC filed a response.

By order dated October 7, 2013, Koitz's Motion to Dismiss was denied. The order also noted that during the case management conference held on August 7, 2013, it was determined that a hearing in this matter would only be held if the issues raised in Koitz's Motion to Dismiss could not be adequately addressed by a motion to dismiss and responses thereto. Because the issues had been adequately addressed and resolved by the order, it was determined that a hearing would not be held.

The Division has provided the parties with notice of the numerous communications or public comments it has received.

#### FINDINGS OF FACT

The material facts are set out in the Petition and Koitz's and the Condominium Intervenors' responses. The Division takes no position as to the accuracy of the facts and accepts them as submitted by KPRC, Koitz and the Condominium Intervenors for the purposes of issuing this declaratory statement.

1. KPRC is a not-for-profit corporation that was incorporated on August 31, 2012, pursuant to Chapter 617, Florida Statutes.<sup>1</sup>

2. KPRC maintains and administers the Kings Point Recreation Properties ("the Recreation Properties"), which include such amenities as golf courses, clubhouses, swimming pools, restaurants, exercise facilities, theatres and parking facilities.<sup>2</sup>

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<sup>1</sup> Pet Decl Stmt at 1

<sup>2</sup> *Id.* at 1, Art IV, KPRC, Articles of Inc

3. The Recreation Properties serve 7200 condominium unit owners who are members in one of the 91 condominium associations, which operate condominiums pursuant to various declarations of condominium.<sup>3</sup>

4. The condominiums are located in the Kings Point Community in Delray Beach, Palm Beach County, Florida.<sup>4</sup>

5. The Recreational Properties were not originally owned by the 91 condominium associations; rather, the properties were leased pursuant to long term recreational leases to the 91 condominium associations.<sup>5</sup>

6. The 91 condominium associations acquired ownership of the Recreational Properties via agreements for deed, and currently own the property as tenants in common.<sup>6</sup>

7. The property comprising the Recreation Properties is not included as part of the common elements of any of the condominiums.<sup>7</sup>

8. The property comprising the Recreation Properties has not been submitted to the condominium form of ownership and the property is not subject to a declaration of condominium.<sup>8</sup>

9. Article V(1) of KPRC's Articles of Incorporation provides:

**ARTICLE V—MEMBERS; MEETINGS OF MEMBERS**

(1) Class memberships; non-voting Member. There shall be 2 classes of members, Class A members and Class B members. The following shall be Class A members: Independent Condominium Associations of Kings Point, Inc., a Florida non-profit corporation (hereinafter ICA), Kings Point Community Association, Inc., A

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<sup>3</sup> Pet Decl Stmt at 1

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.* At 2

<sup>6</sup> *Id.* at 2

<sup>7</sup> *Id.* at 2

<sup>8</sup> *Id.* at 2

Florida non-profit corporation (hereinafter KPCA), and the Independents which is at present an unincorporated entity consisting of Seville Condominium Association, Inc., a Florida non-profit corporation and a condominium association governed by Ch. 718, Florida Statutes, Valencia Area Condominium Association, Inc., a Florida non-profit corporation and a condominium association governed by Ch. 718, Florida Statutes, and Waterford Condominium Association, Inc., a Florida non-profit corporation and a condominium association governed by Ch. 718, Florida Statutes. The Independents may incorporate in the future. The Board of Governors shall annually designate a nonvoting member who shall be a nonvoting member in both Class A and Class B. The non-voting Member shall not be a unit owner in any condominium in Kings Point. Every condominium association in the Kings Point Community shall be a Member of the Corporation. The condominium associations shall be Class B members. Unit owners are not members in the Corporation.<sup>9</sup>

10. KPRC's Board of Directors is composed of representatives from four Umbrella Organizations: Kings Point Community Association, Inc; the Independents; the Independent Condominium Association's of Kings Point, Inc.; Saxony and the Developer/Seller.<sup>10</sup>

11. Each Umbrella Organization represents a number of the 91 condominium associations.<sup>11</sup>

12. Koitz resides in and owns a condominium located in the Flanders N Condominium located in the Kings Point Community.<sup>12</sup>

13. The Condominium Intervenors are eight condominium associations which operate 71 condominiums representing 2,590 unit owners in the Kings Point Community.<sup>13</sup>

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<sup>9</sup> Art. V(1), Art Of Inc , KPRC

<sup>10</sup> Pet Decl Stmt at 2 (citing Article III, ByLaws KPRC)

<sup>11</sup> *Id.* at 3

<sup>12</sup> Koitz Motion to Intervene In Pet For Decl Stmt At 1.

<sup>13</sup> Joint Motion to Intervene and Motion For Extension of Time to Present Legal Argument at 1

## CONCLUSIONS OF LAW

14. The Division has jurisdiction to enter this order pursuant to sections 718.501 and 120.565, Florida Statutes.

15. Section 120.565, Florida Statutes, provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

16. Rule 28-105.001, Florida Administrative Code (2007), provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

17. KPRC has standing to petition for a declaratory statement.<sup>14</sup>

18. Rule 28-105.0027(2013), Florida Administrative Code, provides that the presiding officer shall allow for intervention of persons whose substantial interests will be affected by the disposition of the declaratory statement.

19. Koitz and the Condominium Intervenors have standing to intervene.<sup>15</sup>

20. KPRC is not a condominium association as defined by section 718.103(2), Florida Statutes (2013). The statute provides:

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<sup>14</sup> Section 120.565, Florida Statutes. (2013)

<sup>15</sup> Rule 28-105.0027, Florida Administrative Code.

“Association” means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.

21. This subsection is a codification of the decision in *Downey v. Jungle Den Villas Recreational Association*,<sup>16</sup> which applied both the “constituency” and “function” tests to determine whether a master association is a condominium association governed by chapter 718, Florida Statutes.<sup>17</sup> In order to be a condominium association, an association must:

- 1) function like a condominium association in that it must operate real property in which a condominium owner has use rights, and;
- 2) have a membership constituency that is
  - i. exclusively composed of unit owners or their representatives, and;
  - ii. mandatory as a condition of condominium ownership.

22. Article V(1) of KPRC’s Articles of Incorporation establishes KPRC’s membership stating, in pertinent part:

The Board of Governors shall annually designate a nonvoting member who shall be a nonvoting member in both Class A and Class B. The non-voting Member shall not be a unit owner in any condominium in Kings Point

23. KPRC’s membership includes a non-condominium owner. Therefore, KPRC fails the exclusivity prong of the constituency test and is not an “association” as defined by Section 718.103(2), Florida Statutes (2013).

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<sup>16</sup> 525 So. 2d 438 (Fla 5th DCA 1988)

<sup>17</sup> *In re Pet for Decl. Stmt Turberry Village Master Ass’n, Inc.*, Docket No. Agency Clerk at 8, DS 2013-002 (April 6, 2013)

For the reasons stated above it is hereby:

**ORDERED** that Kings Point Recreation Corporation, Inc is not an association as defined by section 718.103(2), Florida Statutes.

**DONE** and **ORDERED** this 13 day of November, 2013, at Tallahassee, Leon County, Florida.



  
RONALD WHITAKER, Director  
Department of Business and  
Professional Regulation  
Division of Florida Condominiums,  
Timeshares, and Mobile Homes  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, FL 32399-1030

**NOTICE OF RIGHT TO APPEAL**

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED BY PETITIONER PURSUANT TO SECTION 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES APPELLATE PROCEDURE BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(c), FLORIDA RULES OF APPELLATE PROCEDURE BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL ACCOMPANIED BY APPROPRIATE FILING FEES AND WITH THE AGENCY CLERK, 1940 NORTH MONROE STREET, NORTHWOOD CENTRE, TALLAHASSEE, FLORIDA 32399-2217 WITHIN THIRTY (30) DAYS OF THE RENDITION OF THIS FINAL ORDER.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Karl M. Scheuerman, Esq , Sachs Sax and Caplan, 660 East



Jefferson Street, Suite 202, Tallahassee, FL 32301, Dina A. Keever, Esq., Dina A. Keever P.A., 4440 PGA Boulevard, Suite 600, Palm Beach Gardens, FL 33418, Scott C. Gherman, Esq., Scott C. Gherman, P.A., 151 NW 1<sup>st</sup> Avenue, Delray Beach, FL 33444, and Peter M. Dunbar, Esq., Pennington P.A., P.O. Box 10095, Tallahassee, FL 32303, this 15<sup>th</sup> day of ~~June~~, 2013. *Bm*

*NOVEMBER*

*Brandon M. Nichols*

BRANDY NICHOLS, DOCKET CLERK

Copies furnished to:

Janis Sue Richardson, Esq.  
Chief Attorney