INFORMATION

March 16, 2018

Member Voting on Large Capital Expenditure

Issue:

The Bylaws of the Tahoe Donner Association provide authority and limitations to the board of directors to establish capital funds like the Reserve Replacement Fund and The Development Fund to maintain the Associations assets. The Board is required to produce annual budgets including the resulting annual assessment and to identify the purposes for which the Capital Funds will be utilized.

The basic questions to be discussed include 1) at what dollar amount should the Board more formally consult with and ask for a membership vote on a large capital improvements even though the Bylaws may not require it, 2) at what point in time should the membership vote on a potential long-term capital expenditure for which the funds are to be accumulated over a future period of time and 3) if such a vote is warranted should it be an advisory or a deciding vote?

Background:

In reviewing the Bylaws of the Tahoe Donner Association, Article IX talks about the Duties and Powers of the Board. Section 2 of Article 9 refers to the Boards limitation on Powers (page 22 of 37) and states that the Board of Directors shall not be entitled to take any of the following actions without approval of the specified percentage of members: a) The affirmative vote by written ballot of a majority of a quorum (the vote of a majority of the votes cast by written ballot initially at least 25% of the voting powers of the members) shall be required before the Board is authorized to take action on any of the following matters:

(i) any action or undertaking which requires aggregate expenditures for capital improvements to the Common areas in any fiscal year in excess of 5 percent of the budgeted gross expenses of the Association for that fiscal year; provided however that this limitation shall not apply to the expenditure of any funds accumulated by the Association on any new capital improvements or development fund so long as the expenditure is for the purpose for which the fund was established."

In Article XII, Member Assessment Obligations and Association Finances board of directors are required to establish an annual budget and publish that budget to the membership annually.
"Section 5. Budgets and Financial Statements. The following financial statements and related information for the Association shall be regularly prepared and copies thereof shall be distributed to each Member of the
Association: (a) Budget. A pro forma operating budget for each fiscal year consisting of at least the following information shall be distributed to Members not less than 45 nor more than 60 days prior to the beginning of the fiscal year:

(i) Estimated revenue and expenses on an accrual basis; (ii) The amount of the total cash reserves of the Association currently set aside for the future repair or replacement of, or addition to, those major components of the Common Areas and Common Facilities which the Association is obligated to maintain and for contingencies; (iii) An estimate of the current replacement costs of the estimated remaining useful life of, and the methods of funding to defray repair or replacement of, or additions to, those major components of the Common Areas and Common Facilities which the Association is obligated to maintain; (iv) A general statement setting forth the procedures used by the Board of Directors in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Areas and Common Facilities which the Association is obligated to maintain."

Therefore, the "5% Rule" in the Bylaws <u>specifically refers</u> to those funds expended by the Board of Directors that where not already part of the annual budget. Also, it does not apply if Development Fund contributions derived from regular annual assessments are expended for the purposes for which they were accumulated. There are several "5 % rules" that appear in the Governing Documents and that require member approval when an assessment, or an expenditure for capital improvements, will exceed 5% of the budgeted gross expenses of the Association in each fiscal year. However, these rules either apply only to special assessments, or contain carve-outs from the member approval requirements for expenditures from capital development funds for purposes for which the funds have been accumulated.

In 2018, 5% of budgeted gross expenditures operating fund ($18,545,000) equates to $927,250 and when expenditures in the Replacement Reserve, ($6,354,000) New Machinery and Equipment ($213,000) and Development Funds ($1,408,000) are considered, gross expenditures rise to $26,520,000 of which 5 percent is $1,326,000. Therefore, for projects not identified in the 2018 annual budget, the board of directors is limited to nonbudgeted annual expenditures of $1,326,000 in 2018.

At the current time the General Planning Committee, under the Boards directional guidance has two task forces looking at 1) the expansion of Trout Creek and 2) the Downhill Ski Lodge. The Trout Creek expansion project is estimated to cost in the range of $2.5 million while the very preliminary estimates of the potential Downhill Ski Lodge indicates expenditure are in the $10-$15mm range. The long-term Association approach to these types of capital reinvestment projects has been to identify the project and its estimated cost and to save funds until the Association could appropriately afford the project. In doing so the approach avoids onetime special assessments.

At the present time it is estimated that 70% of the funds ($1,750m) for the Trout Creek expansion would come from the replacement reserve fund ($890K in 2018, and remaining $860K accelerated from out-years), of which 100% has been saved and budgeted and 30% ($500K budgeted in 2018 and remaining $250K in 2019 for a total of $750,000) from the Development Fund of which 100% has been saved and budgeted. However, funding from the Development Fund should be reviewed against other board identified priorities. Additionally, the follow other capital projects related to Trout Creek Fitness Center have been identified outside of this expansion project.

- The 2018 Trout Creek weight room equipment replacement plan/budget is currently planned for this summer, the total Replacement Reserve Fund schedule/budgeted shows $90,925 in 2018 for this. Other Reserved Replacement Fund (RRF) components due for replacement for Trout Creek are summarized here.

2018	$ 90,925
2019	$ 39,864
2020	$ 42,170
2021	$ 8,204
Total next 4 years	$ 181,163

- Both phases of Pool improvements total $531,245, as Board approved in August of 2017. Costs spent to-date are $246,761**.** So, $284,484 left to address phase II of the pools out of RRF this fall 2018.

Therefore, between 2017 – 2020 the Trout Creek Recreation Center has planned to receive an estimated $3,204,204 in capital reinvestment. The approval authority level of these funds is a subject of this discussion.

Regarding the potential Downhill ski lodge update/renovation/building replacement, there is $1.3m in replacement reserve components related to the building and $4.3 million is the budgeted 2018 ending balance in Development Fund These two funds combined equate to $5.6 million or 37 to 56% of the $10-$15 million total project range. Thus, in order to fund this project, the Board would be required to save an additional $5-10m dollars over the next 3-5 years. Which is possible at the current2018 Development Fund annual assessment level of $310 per unit = $2,007,000 annually.

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Board Meeting Date: March 24, 2018