



Tahoe Donner BOD Election 2020 Elections Committee Summary Report

The 2020 Tahoe Donner Board of Director's Election began on March 28, 2020 when candidate applications were made available to members interested in seeking a position on the board. Five candidates were certified as eligible to sit for election by the Elections Committee. The slate of candidates was announced to the membership and the board on April 27. Those candidates were: Laura Lindgren, Courtney Murrell, Steve Mahoney, Kristin Bohm and Rob McCray. One additional member submitted an incomplete application and was notified by the Committee that the application, as submitted, was invalid and therefore rejected.

By the time the slate of candidates was announced, stay-at-home and social distancing restrictions imposed due to the COVID-19 were in full swing. As a result, many of the planned Election Procedures (approved by the Board at the February 5th board meeting), had to be modified. These included:

- Requiring candidates to self-produce their introductory candidate videos and official candidate photos (with assistance and guidance from the Marketing Department).
- Moving all planned in-person election committee sponsored events to virtual meetings via ZOOM. These included the Candidate Informational Forum, the Meet and Greets and the Candidate Night Forum.
- Defining a mechanism to allow in-person voting in the face of COVID restrictions.

These activities were all successfully recast, and the election proceeded as required by the TD Governing Documents and California law. Results were announced at the close of the Annual Membership Meeting on June 28 via ZOOM. Steve Mahoney and Courtney Murrell were elected by wide margins. Voter turnout, at 49.5%, was the highest turnout to date in a Tahoe Donner Director Election. The official report of the Inspector of Election and Accountancy Firm were presented to the board at the July 24th meeting.





Election Issues Identified

Member requests for official Association membership list

Effective in January 2020, new legislation (SB 323) amended the Davis-Stirling Act in a number of ways, including the timeline for director elections, eligibility of members to vote and member access to the official membership list *including e-mail address if provided*.

Access to member e-mails by candidates and surrogates has been an issue in TD elections for the past several cycles. Until this year, bulk e-mail lists used for campaign purposes were largely compiled from personal e-mail lists accumulated by individual members over time. The Fair Campaign Guidelines adopted prior to the 2019 election cycle advised that while use of these bulk e-mail lists could not be controlled by Tahoe Donner, members using this type of campaigning should prominently include an OPT OUT link in their e-mails (an FCC requirement). If a member opted out, that request was to be honored and the e-mail address removed from the list.

Even with these guidelines spelled out and widely published to the membership, we received a MULTITUDE of complaints from members re: how a candidate or surrogate obtained their e-mail (or mailing address). While they were assured that TD had not provided the e-mail addresses, there was still widespread discontent about this issue.

The newly enacted legislation requires that the official membership list, which is available to members on request, now includes the e-mail address unless the member has opted out or has not provided the e-mail address. A procedure was put in place for a member requesting the list from TD Administration for approved uses only, not to be used for solicitation of business etc.

In anticipation of this new requirement adding to the consternation over e-mails, the Marketing Department began an awareness campaign in December of 2019 advising the membership of this change and highlighting their ability to OPT OUT. From December 4 through May 14, 320 members opted out. Since May 15 another 63 have opted out, bringing the total to 383. 8 requested and were given the list (which was provided as an electronic PDF). Even members who reporting opting out complained that they still received e-mails from candidates, surrogates and board members. We believe that these individuals were using personally accumulated lists or lists used in prior elections.

In the post-election survey sent to members, responses to the question, "How do you feel about the number of emails you received from candidates?" yielded the following results –





Not Enough = 3.11%

Just Enough = 35.55%

Too Much = 36.6%

I Didn't Receive Any = 13.13%

Other (open ended) = 11.83%

RECOMMENDATION:

- Reiterate to the membership that opting out of sharing the official member list does not remove them from receiving regular informational emails from Tahoe Donner.
- Discuss with legal counsel putting language on the request form stating/requesting that the list not be shared with other individuals. Only the person who requests the list can send from it. Another related issue is the use of the list after the election cycle is ended. The 'official membership list' is not a static document. Members can "OPT OUT" of having their information shared at any time. Property ownership changes. How can we try to make clear that the usefulness of campaign 'lists' expires with the end of the election cycle. If desired a new list must be requested each year.
- Re-evaluate numbers/kind of election related e-mails generated by TD staff, given that candidates can generate their own personal messages to the membership.

Candidate and Board Member Complaints/Requests for Investigation by EC

As the Board is well aware, during the election the EC received multiple complaints and requests for investigation re: communications to the membership (including e-mails, postal mailings and/or NEXT DOOR) alleging the spread of inaccurate and/or spurious information which impugned the reputation of various individuals. These communications were authored by three sitting board members and one candidate.

The Elections Committee Charter defines the purpose of the committee as follows:





The purpose of the Elections Committee ("Committee") shall be:

- To assure the efficient administration of the elections process
- To certify the eligibility and good standing of candidates volunteering to run for election to the Board
- To monitor the election process to help assure its fairness and impartiality
- To participate in the annual Candidate's Night(s) IAW the established schedule

The mandate to ‘monitor the election process to help assure its fairness and impartiality’ coupled with a very contentious election campaign in 2017, led to the development of the Fair Campaign Guidelines, first implemented in the 2018 campaign. That original language provided that:

“The Elections Committee will monitor the election process to help ensure its fairness and impartiality. To that end, the Elections Committee, in conjunction with the Inspector of Election, will monitor campaign activities of candidates, respond to and investigate inquiries/complaints from members, staff and/or other candidates and inform the board of issues that are I conflict with the Association CC&R’s.”

That language has persisted through 2020. (Language re: candidate endorsements and electronic campaigning was added in 2019.)

After discussion with legal counsel, the committee understands that we overstepped our role in conducting investigations into complaints this year and in previous years, and in involving the Inspector of Elections in the investigations, which is outside his role. These Guidelines will require major revision and education of all parties involved going forward to clarify what is and is NOT the role of the Elections Committee. We will need to address specifically how to deal with and respond to member/candidate complaints brought to the committee.

It is important to note that this whole issue began with a sitting board member inserting himself into the election process and continued with the subsequent involvement of a second and third board member. While these board members were careful to assert that their comments were their own personal ones and not those of the board, the perception, as evidenced by member comments on the post-election survey, is still that the board meddled inappropriately in the election. On the post-election member survey, there were over 190 separate member comments (of 1627 respondents) calling out the board or specific board members for interference in the election, many calling for censure and/or removal of the offending board members. Several respondents called on the BOD to adopt and institute a code of conduct for board members that prohibits directors from intervening in the election or trying to influence the outcome of the election. While some noted a director (as a TDA-HOA member) might endorse candidates





(others indicated this should not be allowed), respondents stated that directors should not campaign nor make disparaging comments about current candidates. Respondents found this behavior “disgraceful”, “unprofessional”, “unacceptable”, “unconscionable”, etc.

It can be noted that prior boards decided that the Elections Committee was the one committee to which a Board liaison would NOT be appointed, citing that this was done to prevent any appearance of a conflict of interest or that the current BOD intervened in an election. Given the complexity of communications now possible, the Board should adopt other appropriate behavioral norms for directors to further that same outcome.

It is the opinion of the Elections Committee that actions of current Directors in the 2020 BOD election undermined members’ confidence in the election process and regard and respect for the BOD and for the Elections Committee. This is well evidenced by member comments in the post-election survey. *Directors should make it a priority to read these comments to fully understand the sense of disapproval voiced by HOA members.*

Legal counsel has advised that ‘the complaints involving election related communications that were delivered outside of Association channels, fall within the broad protected free speech rights that all members have during the election process’. However, it put the committee in an untenable position.

Recommendation:

It is the Committee’s strong recommendation that election interference by current board members be curbed by an enforceable Board Code of Conduct and Ethics that defines what is appropriate and ETHICAL behavior during an election. We echo the following para-phrased comments submitted by members on the survey:

Current board members should stay out of the election and let the candidates actually running present their own case for election.

Personal attacks by sitting board members on any member, candidate or not, should not be allowed.





Election Rules Revision/Recommendation

Current Election Rules will need to be updated to mirror the language in SB 323 re: eligibility of members to vote. The ‘in good standing’ requirement has been removed; the owner as of date ballots are mailed is the member eligible to vote.

Language is being drafted by legal counsel to update the rules. When approved by the board, the rules undergo 45-day member comment period. Target to publish to the membership is no later than December 2020.

Elections Committee Charter Revision/Recommendation

Review and possible updating of the current Elections Committee Charter is being reviewed by legal counsel per his recommendation. If revisions are recommended a revised charter will be presented to the board for discussion and approval.

Fair Campaign Guidelines Revision/Recommendation

Major revisions to the Fair Campaign Guidelines will be required. Review of that document is currently under review by legal counsel. When his recommendations are received, they will be presented to the board for discussion and approval.

Other Recommendations – based on candidate and member feedback

- Continue to use the ZOOM format for all Elections Committee sponsored events post-COVID.
- Consider scheduling virtual Meet and Greet events when only one candidate is participating at a time. Members voiced a preference to not move ‘from room to room’ during candidate availability, but to have the opportunity to hear the entire discussion. Meet and Greets will be recorded and made available to the membership for review.
- Revisit the structure and scheduling of Elections Committee sponsored events, e.g., perhaps break Candidate’s Night into two separate, shorter forums and host only one Meet and Greet as described above.





- Explore the option of a secure ballot “drop box” in Tahoe Donner for ballots as is done in some state-wide elections.
- Provide candidates with a consistent message re: how to advise their supporters to get replacement ballots and to submit ballots at the time the ballots are mailed.
- While we continue to hear recommendations for a ‘debate’ to replace the Candidate’s Night Forum, the committee believes such a forum would only do more to facilitate personal attacks, which we consider to be antithetical to what we are all trying to accomplish - bringing the community together.

