

Proposed changes in blue and red (blue = staff and committee chairs, red = general counsel)

**TAHOE DONNER ASSOCIATION**  
**RESOLUTION ~~97-521-X~~**  
**PROCEDURES FOR MEMBER APPEALS FROM COVENANTS AND**  
**ARCHITECTURAL STANDARDS COMMITTEE DECISIONS**

~~WHEREAS~~WHEREAS, on May 21, 1994, pursuant to Covenants and Restrictions (C&Rs), Article V, Sec. 12, the Tahoe Donner Association (TDA) Board of Directors adopted Resolution 94-4 establishing appeal procedures and identifying the composition and powers of an Appeals ~~Board~~Committee to hear appeals from decisions ~~allowing members (owner(s)) to appeal a decision of the~~ ~~rendered by the~~ Environmental Control Committee (ECC); and

~~WHEREAS~~WHEREAS, on February 15, 1997, pursuant to the request of the ECC, the TDA Board of Directors approved changing the name of the ECC to the Architectural Standards Committee (ASC); and

~~WHEREAS~~, On~~N~~ March 17, ~~12~~1995, pursuant to Article ~~XIII~~, Section 1 of the Bylaws, the TDA Board of Directors established a Covenants Committee to hear and decide cases involving alleged violations of the Governing Documents; and

~~WHEREAS~~, pursuant to the C&Rs, decisions of the Covenants Committee (Article XIII, Section 7) and the ASC (Article V, Section 12) are appealable to the Board of Directors or a duly authorized committee; and

~~WHEREAS~~, pursuant to Article V, Sec 12 and Article XIII, Sec. 7, procedures for appeals and hearing of appeals are considered Association Rules and hereby adopted following 45-day notice and comment period.

**THEREFORE, BE IT FURTHER RESOLVED**, that the TDA Board of Directors adopts the following statement of purpose, composition and powers of the Appeal ~~Board~~Committee and related procedures for appeals from the decisions of both the ~~m~~ASC and Covenants Committee ~~decisions~~:

**I. PURPOSE**

The ~~Appeal Board~~Appeals Committee is established pursuant to the governing documents and to hear ~~owner~~Member's appeals from decisions of the ~~Committee~~s.

**II. COMPOSITION OF THE ~~APPEAL BOARD~~APPEALS COMMITTEE**

An Appeals Committee shall be appointed by the Board, and The Appeal Board shall include ~~consist a quorum of of the five members of~~ the Tahoe Donner Association Board of Directors, which shall be 3 if there are 5 directors sitting on the Board of Directors. A Director's ~~service on the~~ Appeal BoardAppeals Committee shall be concurrent with service on the Board of Directors. The Vice President of the Board of Directors shall serve as the Chair of the ~~Appeal Board~~Appeals Committee (Chair), and the President of the Board of Directors shall serve as Co-chair.

### III. AUTHORITY AND RESPONSIBILITIES OF THE APPEAL BOARD APPEALS COMMITTEE

In exercising its authority and responsibilities, which shall always be at the direction of the Board, of the Appeal Board Appeals Committee may do the following: include, but are not limited to, the following:

- a) Elect to hear the appeal, or to affirm the decision of the Committee without a hearing;
- b) Reverse or modify the decision of the Committee;
- c) Make findings related to the facts or the applicability of the rules and return the matter to the Committee for further consideration;
- d) Recommend specific action to be undertaken by the General Manager relative to individual cases or Tahoe Donner policies. Such recommendations may include appropriate review by legal counsel, conducting surveys, or consulting with governmental agencies;
- e) All members of the Appeal Board Appeals Committee shall review, approve, and sign the record of appeal for each proceeding; and -  
f) Take any other such action that is consistent with its authority and responsibilities, and/or as directed by the Board of Directors.

### IV. APPEAL PROCEDURES

Owner Members who wish to appeal the decision of the Committee shall adhere to the following procedures:

#### A. Basis and Timeliness for Member Appeals.

If, after receiving notice of the Committee's decision, a member or members n owner(s) believes that the Committee has erred in the process of reaching its decision, has not adhered to the existing rules regarding said decision, or that there were extenuating circumstances that were not considered by the Committee, the member or members owner(s) of the subject property must submit the Appeal the Request to the Appeal Board Appeals Committee at 11509 Northwoods Blvd., Truckee, CA 96161. The Appeal Request must include a written statement as to why the member or members are owner(s) is appealing the Committee's decision and must be received in the General Manager's Office within 15-days following receipt of the Committee's decision. The Appeal Request must include any and all documentation to support the appeal, as additional documentation, or submissions Documentation relating to the appeal will not be accepted after the appeal submission deadline. Once an appeal has been filed, the owner Member(s) shall be referred to as appellant(s).

#### B. The Appeal Board Appeals Committee Decision to Hear or Decline to Hear the Appeal May Deny to Schedule Scheduling an Appeal Hearing.

- 1) The Appeals Committee shall have the discretion to hear any appealed matter, or decline to take the appeal and thus affirm the decision of the Committee (C&R, XIII, 7c & C&R, V, 12). Any decision to decline an appeal shall be based on a reasonable determination from the record that the appeal lacks merit.
- ~~1) Appeals may only be requested by the owner or owners owner(s) of the property or properties y associated with the~~
- ~~2) appeal and requests by other parties will not be entertained. Member Member~~
- 3) Incomplete information provided in on the Appeal Request REQUEST FOR APPEAL (Request) may result in a decision not to hear dethe nial of an appeal or a request hearing and a request for further information.
- 4) The Appeal Board shall have the discretion to hear any appealed matter, or decline to take the appeal and thus affirm the decision of the Committee (C&R, XIII, 7c & C&R, V, 12). Any decision to decline an appeal shall be based on a reasonable determination from the record that the appeal lacks merit.

C. Hearing Date.

After agreeing to hear the Appeal, The the date for the hearing shall be set by the Chair within a reasonable time considering the convenience of all parties. Such date shall be determined by the Chair and will ordinarily be scheduled for the next regularly scheduled Board of Directors' meeting, *if* the Request is received at least ~~two-three~~ weeks prior to that date, unless the Chair determines otherwise. If the Chair determines that a delay is necessary, the appellant shall be notified in writing at least ten days before the scheduled hearing date, unless it was impractical under the circumstances to provide such ten-day advance notice. A new hearing date shall be scheduled as soon as practical, but not more than ~~within~~ 60 days from the date of the original hearing date. Each hearing will be scheduled for 30 minutes.

D. Request for Continued Hearing Date.

The appellant may continue a scheduled appeal hearing by submitting a REQUEST FOR CONTINUANCE (Continuance) to the Chair at 11509 Northwoods Blvd., Truckee, CA 96161. Such continuance *may* be granted at the discretion of the Chair; and, if granted, the appellant(s) shall immediately be notified in writing, or by telephone of the continued date. Said hearing will be scheduled as soon as practical and not more than ~~within~~ 60 days ~~of~~ after the originally scheduled date, and no more than two continuances will be granted per appeal, unless the Chair determines there are extenuating circumstances that require-justify additional continuances. ~~otherwise.~~

E. Agent of Representative of the Appellant.

If the appellant cannot be present at the hearing and desires to appoint a representative to appear on their behalf, said representative, his/her agent shall be ~~so~~ designated in the Appeal on the Request, or in writing to the Chair at least five days before the hearing date. If neither the appellant, nor their his/her representative appears before the ~~Appeal Board~~ Appeals Committee at the hearing, the ~~Appeal Board~~ Appeals Committee will decide the matter based upon the written statements presented by the appellant, if any, and the written or verbal presentation of the Committee.

F. Appeal Hearing Proceedings.

The Appeals Committee shall hold hearings in open session unless the matter permits or requires holding hearings in executive session pursuant to Civil Code Section 4935.

~~Pursuant to Civil Code sec 4935, the Appeal Board may adjourn to or hold exclusively in executive session appeal hearings relating to appeals against Architectural Standards and Covenants Committee member disciplinary decisions. Appeal hearings from decisions of the ASC, such as the decision to approve or deny an architectural application, or elements thereof, will be held in open session unless there are extenuating circumstances that require or permit holding the hearing in executive session.~~

Appeal hearings from decisions of the Covenants Committee typically involve member discipline, and discipline and shall be held in executive session if requested by the Member who is the subject of the hearing, or in the discretion of the Chair.

~~for denial of an architectural application, or elements thereof, will be held in open session unless the Appeal Board determines a closed hearing to be in the Association's best interests (Civil Code sec. 1365.05(b)). The hearing shall be open to all property owners unless the appellant requests a closed hearing on the Request, or the Appeal Board determines a closed hearing.~~

Each hearing is scheduled for 30 minutes. The hearing proceeding will be as follows,

- Staff provides Staff Report – 10 min
- Appellant states his/her case – 10 min

~~Appellant can no longer comment or ask questions unless the Board or Staff ask them specifically (ie can be reworded)~~

- Board asks questions of staff and appellant, and when applicable, the owner of property if appellant is not the property which action was taken upon – 10 minutes  
The board will then deliberate and act on the appeal. Deliberations relating to discipline against a members shall be held in executive session with the Appeals Committee and staff only, unless otherwise determined by the Chair.

F.G. Appeal Appeals Hearing Record.

Proceedings at the Appeal hearings will be recorded by the Secretary and a permanent record shall be transcribed for approval by all members of the Appeal Board Appeals Committee. ~~The hearing shall be open to all property owners unless the appellant requests a closed hearing on the Request, or the Appeal Board determines a closed hearing to be in the Association's best interests (Civil Code sec. 1365.05(b)).~~

G.H. Decisions.

The Appeal Board Appeals Committee shall communicate its decision as follows:

- 1) In open or closed session at the end of the hearing followed by written confirmation within ~~fifteen~~ days of the hearing date; or
- 2) Render a decision following further deliberations followed by written confirmation within ~~fifteen~~ days of the hearing date; ~~or,~~
- 3) ~~Render decision not more than 30 days after the hearing by providing written notification of such delay within the ten day period following the appeal hearing.~~

If the determination of the Committee is reversed or modified by the Board, the Board's decision shall explain why such action was taken.

All decisions of the Appeal Board Appeals Committee shall be final.

This Resolution shall supersede Resolution 94-4, 97-5, and the procedures adopted herein shall be administered through the Office of the General Manager and Appeal Board Appeals Committee.

DATE:

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Don Koenes, President

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Jim Roth, Vice President

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Steven Mahoney, Treasurer

\_\_\_\_\_  
Courtney Murrell, Secretary

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Charles C. Wu, Director