



STAFF REPORT: 2025 Board of Directors Election: Election by Acclamation

RECOMMENDED BOARD ACTION:

By motion: Declare Benjamin Levine and Jay Wertheim elected by acclamation in Tahoe Donner's 2025 Board of Directors Election.

The Staff Report and recommendation has been reviewed by the Inspector of Elections for Tahoe Donner Association.

BACKGROUND:

For the 2025 Tahoe Donner Association (TDA) election, there are two Board seats up for election. Both seats are three-year terms. The two seats up for election are currently held by Benjamin Levine and Jim Roth.

The deadline for candidates to submit their application to be placed on the 2025 Tahoe Donner Board of Directors ballot was April 15, 2025, at 10AM. Information about the opportunity to run for the Board has been provided to the membership through a number of channels, including issues of *Tahoe Donner News*, weekly e-blasts, dedicated emails, and webpage resources.

ANALYSIS:

Notice of the 2025 Board of Directors election and procedures has been duly given to the membership. The notice identified 10AM on April 15 as the deadline to submit applications for the two open Board of Directors seats. Prior to the candidacy application deadline, the Board of Directors received three verified applicants for the 2025 Board of Directors Election: Benjamin Levine, Jay Wertheim, and Nicholas Rab. On April 19, Nicholas Rab informed the Elections Committee of his decision to withdraw from the 2025 Board of Directors Election. Because no write-in candidates are allowed in the voting process, and because the number of qualified candidates is equal to the number of open seats, it is recommended that the Board of Directors declare Benjamin Levine and Jay Wertheim elected by acclamation in Tahoe Donner's 2025 Board of Directors Election.

Because Benjamin Levine is one of the candidates, it is recommended he recuse himself from the election vote as a current director. To declare the election concluded by acclamation, the vote by the remaining directors must reach at least three "yes" votes for approval, as two "yes" votes is not a majority of the Board. If the vote fails, TDA would proceed with the election following its normal procedures.

It is important to note that no other candidates may participate in the 2025 election now that the application deadline has passed.

FISCAL IMPACT:



If the Board were to choose to move forward with a written ballot election consistent with TDA's governing documents, the estimated expense would range from approximately \$38,000 to \$50,000. This expense would include printing, mailing, and accounting service costs, and legal fees. In addition, estimated staff hours committed to an election historically exceed 100 hours.

ALTERNATIVE:

The Board may choose to proceed with a written ballot election as described in TDA's governing documents.

RECOMMENDATION:

By motion: Declare Benjamin Levine and Jay Wertheim elected by acclamation in Tahoe Donner's 2025 Board of Directors Election.

ATTACHMENTS:

Best Best & Krieger Inspector of Elections Opinion Letter dated April 21, 2025

Prepared by: Annie Rosenfeld, General Manager

Reviewed by: Brent Collinson, Inspector of Elections

Board of Directors Meeting: April 25, 2025



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April 21, 2025

Annie Rosenfeld, General Manager,

Tahoe Donner Association

Via E-mail only: ARosenfeld@TahoeDonner.com

Re: 2025 Board Elections

Dear Ms. Rosenfeld:

The Association has advised me that as of the deadline for submitting applications/nominations to be elected to the Board this election cycle, there were three approved applications submitted for two positions. However, shortly after that deadline, one of the candidates notified the Association, in writing, that they were withdrawing their application and would not run for office this election cycle.

This left only two candidates for the two positions to be filled.

Common sense dictates that there is now no need for the full election process to go forward and the Board may proceed by Acclamation since there are only two candidates for two positions, the nomination/application process is closed (which followed the requirements of Civil Code section 5103) and no write-ins are allowed.

Unfortunately, the Civil Code only addresses the situation of Board Acclamation when there are no more candidates for an open position *at the close of the time period for nominations/applications*.

There are no reported cases addressing this situation. However, the Legislative Counsel did provide the following language to the Legislature for consideration when considering adding the section regarding the ability to proceed by Board Acclamation:

“Under existing law, if there are not more qualified candidates than vacancies, an association is authorized to consider the candidates elected by acclamation if, among other conditions, the association permits all candidates to run if nominated. However, an association is authorized to disqualify a nominee who has served the maximum number of terms or sequential terms allowed by the association.”

The Code then lists the notice requirements to be met, and the Association has met all of those notice requirements.

Annie Rosenfeld

April 21, 2025

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As noted in 2023, when a similar situation presented itself, it was pointed out that several provisions in the Civil Code, the "Maxims of Jurisprudence" are to be used to aid in the "just application" of the Code.

These include:

- Section 3510: "When the reason of a rule ceases to exist, so should the rule";
- Section 3528: "The law respects form less than substance"; and
- Section 3532: "The law neither does nor requires idle acts".

Accordingly, it is my opinion that no court would require the Association to hold an election when the outcome is already determined. In light of the Elections Committee having completely complied with the notice requirements of section 5103 and this situation not being specifically addressed in the Code, and in light of the Maxims of Jurisprudence and common sense, it is my recommendation that the Board proceed with appointing the two remaining candidates to their position by Acclamation.

If you do have any questions or comments, please let me know.

Yours truly,

A handwritten signature in cursive script, appearing to read "Brent Collinson".

Brent P. Collinson, Of Counsel