

Response to Matt Kahn's letter on the Dues Increase Process

Matt's objection is based on his assumption that the amount of the dues must be written in the By-Laws. This is an inaccurate assumption for the following reasons:

1. Prior to the 2001 amendment to the By-Laws, there was no mention of a dues amount written in the By-Laws. It simply said that dues shall be prescribed by the board of directors.
2. The 2001 language was written into the By-Laws simply to document the 3 year increase schedule. At that time the By-Laws were being amended to restructure the Board, not because it was required for a dues increase. It was just convenient to include the increase as a way to document it. In retrospect, it probably should not have been placed in the By-Laws.
3. Article VII, Section 2 of the By-Laws specifically states that a dues increase shall conform to Article VI of the Indenture of Covenants. The act of publishing a dues schedule in the By-Laws cannot repeal the specific provisions for dues increases in the Indenture of Covenants.
4. Therefore, it is the opinion of the board and its advisors that the Indenture of Covenants is the controlling document since there are 10 paragraphs spread over 4 pages dedicated to the subject of dues and assessments.
5. Indenture of Covenants, Article VI, Section 6. [Quorum for any Action Authorized under Sections 3 and 4.](#) At the first meeting called, as provided in Section 3 and 4 hereof, the presence at the meeting of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Section 3 and Section 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. **This Requirement was met.**
6. Indenture of Covenants, Article VI, Section 7. [Date of commencement of Annual Assessments. Due Dates.](#) "The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors." **This Requirement was met.**
7. Notice: There is no specific notice requirement in the Indenture of Covenants, Article VI, Section 3, for a vote on a dues increase and the general notice requirement in Article XII does not specify a time

period, therefore we believe the notice provision for “meetings” in the By-Laws should be the controlling paragraph. It states:

Section 4: Notice of Meetings - Written notice, stating the place, day and hour of any meeting of members, shall be delivered either personally or by mail to each member entitled to vote at such meeting not less than five (5) days before the date of such meeting or at the direction of the Secretary.

Notice of the Annual Meeting was done by e-mail and hand delivery of a written notice to every home, followed by a phone call to every homeowner. Notice of the dues increase was sent out more than 30 days prior to its effective date of January 1, 2006. Therefore the Notice provision of the By-Laws and Indenture of Covenants was met.

8. Lastly, although there may be some ambiguity between the documents, the Indenture of Covenants is the controlling document, therefore the board has concluded that a By-Laws amendment was not necessary for a dues increase.

Board Decision: It is the decision of the board that Matt Kahn’s objection to the process followed for a dues increase is without merit and the vote of the membership at the 2005 Annual Meeting remains valid.

Recommendation: The Board will appoint a committee to review the language of the By-Laws and Indenture of Covenants for consistency and clarity.

President – Tollgate Association Board of Directors