
RESOLUTION PROPOSAL

DATE: November 19, 2009

SUBJECT: Amend PM 4.02Q Financial Management: LMOA Investment Policy to restore language consistent with restrictions of 1998 vote of the membership

SPONSOR: Director Benita Ellen

BACKGROUND INFORMATION:

At the September 12, 1998 Special Meeting of Members of the Lake Monticello Owners' Association, the membership approved the sale of the Lake Monticello Service Company, a then wholly owned subsidiary of the Lake Monticello Owners' Association, to Aqua Source, Inc.

The membership also voted:

[t]o approve the principal from this sale be invested and under the care of the Members requiring a vote of the Members for the principal to be used. ***The interest from this principal shall be available to the Board of Directors for use in maintenance, upkeep, general care of the amenities and assets of the corporation and capital needs.*** [emphasis added]

The proceeds from the sale of the Service Company were originally invested under the following direction:

The investment objective for the funds derived from the sale of the Lake Monticello Service Company is to preserve and enhance the capital. ***The original principal of the fund is to be kept intact until determined otherwise by a vote of the members of the Owners' Association.*** Interest and dividends earned by the fund may be used as determined by the Board of Directors of the Owners' Association. [emphasis added] (4.02Q, February 25, 1999)

In July 1999, LMOA obtained a legal opinion, which is now generally available within the LMOA community, from Mays and Valentine L.L.P. regarding Uses of Proceeds of Sale of Stock of Lake Monticello Service Company. On page 2, the opinion reads in pertinent part, that "[t]his letter does not address whether any of the principal may be invested in a manner which could result in a ***loss of its value*** or in a capital loss. Nevertheless, we believe it would be prudent ***if only income from the principal is invested in a manner which could result in a loss in order to avoid any questions or conflicts regarding this issue ...***" Neil S. Kessler [emphasis added].

In April 2009, the then Board of Directors approved certain changes to 4.02Q that allow the Treasurer to withdraw interest and dividends from the investment account regardless of the value in the account.

At the direction of the Treasurer, interest and dividends received into the ERA may be withdrawn for use by the Board of Directors in the maintenance, upkeep, general care of the amenities and assets of the corporation and capital needs.

The Board of Directors may authorize ***additional withdrawals*** from the ERA ***provided the Value of the ERA following said withdrawal will be greater than the Principal.*** Any withdrawal ***other than interest or dividends*** after which the Value of the ERA will be less than the Principal will require approval of the members. [emphasis added] (4.02Q, April 23, 2009)

In May 2009, concerned residents raised issues with the above changes. Several BOD members expressed concern about the application of this policy and suggested that the issues be addressed after the election of board members at the July 2009 Annual Meeting.

NOTE: The following changes have been made since the First Reading:

VII. EMERGENCY RESERVE ACCOUNT (ERA)

A. Source and value of funds

The “Principal” in the ERA are the funds initially invested after being obtained from the sale of the Lake Monticello Service Company (LMSC) in the initial investment amount of \$6,630,063.

The “Value” of the ERA is the ~~current~~ value of the securities and cash in the Account, less any interest and dividends that have been received but not withdrawn. The value of the securities in the ERA will be the lesser of (i.) current market value; or (ii.) maturity value, for securities which will mature and for which there is both the ability and intent to hold until maturity.

H. Withdrawals

~~***Interest***~~***At the direction of the Board of Directors, interest*** and dividends received into the ERA may be withdrawn for use by the Board of Directors in the maintenance, upkeep, general care of the amenities and assets of the corporation and capital needs.

The Board of Directors may authorize additional withdrawals from the ERA for use in the maintenance, upkeep, general care of the amenities and assets of the corporation and capital needs.

Any withdrawal after which the Value of the ERA will be less than the Principal will require approval of the members.

STAFF RECOMMENDATION: Concur

TAB 10.3

PROPOSED FINANCIAL IMPACT: Proper protection and preservation of the ERA as per commitment to property owners.

PROPOSED SOURCE OF FUNDING: No costs to be incurred unless another legal opinion is sought.

STRATEGIC PLAN REFERENCE: Meeting BOD's legal obligation to preserve the ERA principal and transparency to financial handling of the ERA

POSSIBLE MOTION:

Move that the Board of Directors approve the amendment of PM 4.02Q Financial Management – LMOA Investment Policy to restrict use of the ERA as presented by Director Ellen in the November 19, 2009 Board packet.

PERSONS RESPONSIBLE FOR FOLLOW-UP: Treasurer and General Manager