

The Annual Meeting of the Big Country Homeowners Association was held on Sunday, September 21, 2014 at the lake common ground. The meeting was called to order at 6:02 p.m. by Dana Mosher and began with introductions.,

ATTENDANCE: The following residents were present: Paul Stern, Steve Smith, Tim & Reneta Roe, Kris Rattini, Gary Pearia, Bob Ottinger, Tonya Goforth, Dan & Dana Mosher, Henry Miller, Ruth Intlekofer, Tracey Huff & Erik Wilkening, Michelle Hoffman, Thomas & Beth Helsel, Ruthie Hall, Daryl Gilley, Becky Christiansen, Ryan & Helene Buchheit, Ron & JoAnn Buchheit, Doug & Robin Barton. 29 homeowners were eligible to vote, making the quorum requirement of 75% = 22 homeowners. This represented 19 lots so we did not have a quorum. Therefore, motions made will be included on a ballot and mailed to lot owners.

MINUTES - Daryl Gilley motioned to approve all minutes needing approval, seconded by Tracey Huff. Those meetings are: 6/17/14, 5/18/14, 9/15/13, 9/16/12, 10/12/11, 9/18/11.

LAKE/DAM REPORT - Robin Barton mentioned that she had some lake information but didn't remember who else was on the Committee and asked Tim Roe, who answered that it was himself and Bill Craft and perhaps one other had volunteered (it was later verified by minutes that it was Tim and Bill, and the Bartons had volunteered to continue helping). Ruth Intlekofer made a motion to delete the CCR section that defines the Lake Committee since we were "not in compliance" with it. Dana Mosher asked why we should incur the expense to remove something when it wasn't hurting anything. Someone asked how much it costs to change the CCR (\$21/first page + \$3/addtl page plus gas/time). There was general arguing because there is actually a committee in place. There was no second for the motion. Robin continued, notifying owners that we still have beavers that are routinely blocking the drain in the center of the dam and that anyone is welcome to help clean it out when the water level gets high. If the lake level is ever touching the new culvert, it is too high and probably blocked at the drain. There is a pitchfork down there. Tim also reported that Henry had stocked the lake with minnows. No other lake issues were known.

WATER SYSTEM REPORT - Robin notified the group that water tests have been shown as safe. The annual Consumer Confidence Report is available online at <http://www.bigcountryacres.info/Water/WaterAnnualQualityReport2013.pdf>. Also, a number of issues were identified by the DNR as good practices that we should follow. Our water tester, Jim Galvin, is willing to take care of those items we have not already done at an additional cost. However, he has not done them yet, so Robin will follow up with him. Water Pipe Repair: a large portion of the underground well pipe has been replaced due to holes that had developed over the years, but the contractor still has to replace 63' more of the pipe. Fortunately, this means that we have not yet been billed \$3291. Home owners will be notified ASAP once we know when he is coming back out; water may have to be turned off. The contractor showed Robin that the dehumidifier we had in there has been totally destroyed by mice. The Bartons have one that they would loan if someone will build a shelf in there to get it off the ground so Darryl Gilley and Tim Roe offered to do it.

TREASURER REPORT

CURRENT SITUATION: Henry Miller explained the financial reports, highlighting the fact that at the rate we are going, we will be out of funds before major expenses in Quarter 1 are due, such as insurance and snow removal. If it weren't for the \$2060 that folks have paid in advance and the water pipe bill we have not received, our bank account would be -\$257 [updated figure since yellow sheet was printed]. He drew attention to the bottom of page 1, which details how many lots are paid in advance, current or overdue.

2015 BUDGET: Henry passed out a possible 2015 budget 2015 that would fit within the current \$400 common assessment but stressed that it left no room for road crack filling, excessive snow removal, unforeseen maintenance such as water pump replacement, patching the asphalt near the main culvert or fixing any culverts. Ruth asked if that budget assumed that everyone would pay their part, which it does. Paul Stern pointed out that any time we have our road plowed

before the asphalt is patched, the gravel will be dug out by the plower. Dana pointed out that we had saved on mowing this past summer because volunteers did some sections and we cut back on the amount of times to mow.

2015 BUDGET INCREASES/DECREASES: a list was distributed of potential increases or decreases to the budget, as suggested by various people over the past few months and a few of the items were discussed.

ROAD SALTING - Robin expressed concern that she had heard of five accidents this past winter because our roads weren't clean. Daryl mentioned that his vehicle had \$1400 in damage from running off the road. Dana expressed that we have been lucky so far that no one has been hurt. Daryl suggested raising the assessment to cover better road clearing but Robin suggested waiting a few minutes in order to discuss other possible increases/decreases as well, to get a clearer idea of how much the assessment needs to be. Daryl and Ruth mentioned another source we could get salt from if needed.

TRASH - Robin had a number of options *if* we want to improve our trash service. 1) Install a lockbar on each bin for \$15/month each, with a customized word combination lock. It is possible that people might put trash next to the bin. It would only work if people close the bin when done. 2) Next cheapest option is to have recycling picked up weekly instead of every other (approx. \$98+\$20/month). 3) Add an entire trash bin for \$297+\$20/month). Tim asked if we have checked into other trash companies. We did a few years ago. Tim mentioned that in the past, when we got bids from other companies, Waste Management gave us a better deal to stay with them. Ruth asked how much a loaded truck weighs: Henry said 60,000-80,000 lbs, depending on whether or not it is loaded; Tim recalled that WM is one of the few contractors willing to bring in empty trucks (less damage to roads). Robin agreed that WM may be willing to deal because she was able to get weekly recycling pickup out of them for free, but for an unknown length of time (WM is letting us try it). Tanya asked if we were still getting high volumes of trash. Henry explained that it was partly seasonal, but others such as Beth Helsel and Daryl said that they still have trouble finding room in the bins. Ruthie Hall added that she sees lots of cars going to the dumpsters all throughout the day and she is not sure they are from BCA. Dana specifically mentioned seeing a **black raised Jeep Cherokee** that she thinks was from outside and someone else has seen the same vehicle, so please watch for it. Tim pointed out that if we call the St. Charles County Sheriff department, they will come out and watch for trespassers. Daryl suggested that we put in a security monitoring system for \$250-\$400ish and will do some further research.

COMMON ANNUAL ASSESSMENT - Daryl made a motion to raise the common assessment back up to \$600 (not including water bill) so that the trustees would have the funds to take care of some of these items. There was a second by Tanya Goforth. It was discussed that we don't need a motion to do that, since the trustees are already authorized to collect up to \$600 (or even more if the Consumer Price Index is taken into account).

Ruth Intlekofer made a motion and gave an explanation for it, which is attached as the final two pages of this document. Tanya asked if we could include an explanation of IRS Revenue Ruling 70-604, which is also attached.

Kris Rattini expressed concern that the motion was too all encompassing and that people might agree with part but not all of it and there was much agreement with her. Robin mentioned that a few of the points were things the trustees were planning to address later in the meeting anyway. Dana suggested that they table that motion until these other points were also presented. Ruth wanted to table anything else related if they did that. There was uncertainty about how to table something without a quorum and then the motion was seconded by Daryl, so nothing was tabled. Tanya said the long motion was too much confusing "legaleze" and should be broken up so that people can understand it better. Steve Smith and others were confused about whether we had passed anything because the subject kept changing. (We had not.)

Robin suggested further discussion about changes to the budget but there was general and somewhat loud consensus that the trustees should just charge **\$600 + water bill in 2015** so that they can address some of these safety and well-being issues. So the trustees agreed to do so (but not until 2015).

Erik Wilkening had left the meeting to call the Missouri Department of Conservation and returned to report that he got some contacts for beaver trappers and will have someone call Robin about it.

EXCESS MEMBERSHIP INCOME - Henry suggested that we don't need to put abiding by IRS Revenue Ruling 70-604 into the CCR, we just need to do it every year. We actually have already been practicing this every year since he became the treasurer, we just have not officially voted on it like other HOAs do. So Henry made the following motion (borrowed from another homeowners' association) and Robin seconded:

The association resolves that any excess membership income over membership expenses for the year ended December 31, 2014, shall be applied against the subsequent tax year. Member assessments are as provided by IRS Revenue Ruling 70-604.

BILLING CYCLE: In the past, common assessments for an entire year were billed at the beginning of the year. A few years ago, we opted to bill quarterly so that folks could spread out their payments and bills were sent at the end of the quarter because of tough economic times. In order to collect the funds before the quarter in which they are needed, **Beginning in 2015, quarterly assessment bills will be sent at the beginning of each quarter. To help us get to this new cycle, the 4th quarter billing for 2014 will be sent out early to save postage, but will not be due until November 30th.**

STERN/MOSHER CULVERT ISSUE - Paul Stern explained that the culvert between his and Mosher property is in very bad shape and he has cleared the area so that people can see it and get to it for repairs. There is a huge hole washed out above it and the south opening is closed in on itself. It needs to have 3' cut off the end. He has a friend who is a civil engineer who hopes to come out within the week to advise us whether the plans to shore it up are adequate. His current plan is to fill the area with approximately two truckloads of gabion rock. Robin had contacted the nearest quarry who sells it for \$12.75/ton, which would be \$561 (\$18/lot) and passed out the yellow sheet with special project cost information. Ruth began to make a motion but Robin asked her to wait because she was still in the middle of hers. Paul and Robin continued to explain how the project could possibly be done more cheaply if they have enough others helping by making small trips to get loads of rock ourselves. We also need to put some kind of barriers ahead of the new large culvert before the first spring downpour when lots of large trees and limbs come down the watershed. Daryl asked what kind of barriers were planned. That discussion was put off until later, since a few guys had suggested various options that could all be done for under \$300 and decided on later. **6. SPECIAL ASSESSMENT** - Robin went back to explain the top part of box 1 on the yellow sheet: basically we need \$311 more per lot to be ready to meet Qtr 1 expenses next year and to fix this hillside and get barriers to protect the large culvert. However, she was not expecting to have a \$600 regular assessment in 2015, so \$311 would be more than necessary. Therefore, Robin motioned, seconded by Paul Stern:

Levy a Special Assessment in the amount of \$211.00, due 11/1/14 for the purpose of defraying the cost of partially replenishing the bank account after the May 2014 culvert replacement as allowed according to paragraph B of Article VIII of our C.C.R.

Daryl asked why we can't wait until spring for this assessment. Robin stressed that the rock needs to be put down around the culvert SOON because Paul already has the area cleared and ready. In addition, winter snow melt will further erode the hole, plus we will need some helpers so it would best to do it during pleasant weather.

SPECIAL ASSESSMENT FOR SPRING 2015 ROAD MAINTENANCE - Dana and Henry had both earlier brought attention to the fact that we have no funds to patch the asphalt where the large culvert was replaced. The gravel gradually washes out and the area is getting worse over time. Robin went over the bottom box on the yellow sheet, explaining that \$3950 was the lowest bid we had received to patch the asphalt (from Mid River Asphalt), but that we cannot know how much it will actually cost next spring. The \$3000 for rock along the sides of the roads is to shore up the edges in places where it is starting to sink. Daryl mentioned that he doesn't want rock along his property, but Robin pointed out that it's not necessary in those areas where grass comes right up to the road because those spots are in good shape (Robin made a colored map for anyone interested and will post it on the website). \$3000 only covers the delivery of rock and we would have to spread it ourselves. We might need more, but would only purchase \$3000 worth and put where most needed. Robin made the following motion, seconded by Tom Helsel: "Levy a Special Assessment in the amount of \$224, due 3/1/15, for the purpose of road maintenance, as allowed according to paragraph B of Article VIII of our C.C.R. " She explained that the due date was early because we have to have the money up front to get on the contractor's schedule and the earlier in the year we patch it, the better. Ruth asked for clarification that the \$3950 was a 2014 price (yes) and asked

what we would do if it was higher in 2015. Robin suggested that we would need an additional assessment at that time or we could dip into the rock portion. Ruth suggested that we just ask for a bit more so Robin rescinded her motion and made a new one, seconded by Tom Helsel:

Levy a Special Assessment in the amount of \$300.00, due 3/1/15, for the purpose of road maintenance, as allowed according to paragraph B of Article VIII of our C.C.R.

Daryl asked if this project would include underlayment along the sides of the roads for weed control; Robin replied No.

HOW TO ENCOURAGE VOTER PARTICIPATION - Tanya Goforth made a motion to "change the quorum to 50%" because we are rarely able to get any business done. It was immediately seconded by numerous people and there was even cheering. Robin pointed out that it would require a change to the CCR and gave Tanya a copy so that she could word it properly. Tanya restated her motion, which was seconded by JoAnn Buchheit:

Change CCR Article III-I to reduce the quorum required to 50% instead of 75%.

Ruth asked whether the 50% would be rounded up or down and Tanya was going to restate the motion again to make sure it would round up, but Robin pointed out this was unnecessary because the section says "at least 75%" so it is automatically to be rounded up.

Tracey Huff expressed frustration that it's hard to take care of the subdivision when people don't send in their ballots. She pointed out that unreturned ballots should not block a proposal because sending a ballot automatically includes all of the lot owners. She made the following motion, which was seconded by Tim Roe. It was clarified that such motion does not change the 66% majority requirement to pass a motion.

Amend the ballot portion of CCR Article III, Section I by adding the bold sentence as shown below.

In the event that this quorum is not represented, an extension of not less than 7 days for voting by ballot. Such ballots must contain the signature of the lot owner and may be submitted in person, by U.S. mail or by email to any Trustee before the ballot deadline. Ballots received after a meeting but before the deadline must be counted by two or more owners and must be retained and made available to any lot owner wishing to verify voting results for a period of one year.

Ballots not returned will be counted as abstentions (non-vote).

TRUSTEE ELECTION (TREASURER) - Dana realized we had skipped item 8 (it was getting dark) and announced that Tracey Huff had volunteered to replace Henry as Treasurer if needed and has spoken with him about the responsibilities. Daryl asked if Henry would stay on, but Henry needs a break but is willing to continue doing the billing portion. Dana, Robin and Tracey are all willing to forego their trustee discounts in order to compensate Henry \$200/year to do our billing service (less than what we have paid outsiders before). Daryl seconded Dana's nomination of **Tracey Huff**, there were at least 14 affirmative votes and no other nominations were made, so Tracey received "the highest number of votes" as per CCR III-G and was welcomed as our new trustee. Ruthie Hall asked if our trustees are bonded, like some organizations do. ****UPDATE: Ruthie mentioned that bonding is required in the CCR.**** Henry replied that they are not bonded (expensive) but ARE insured.

HOW TO ENCOURAGE VOTER PARTICIPATION, CONT'D. -

Discussion returned to this topic and Ruth Intlekofer had the following suggestions (and specified that they were not necessarily her own, yet might encourage others to vote):

- Put each motion on a separate page (ballot) so that people just turn in the ones they want to vote on.
- Keep the old proxy form because people might not be comfortable assigning their vote to a trustee whom they do not know. This was acknowledged and the mistake on the original proxy form had already been corrected as soon as was possible. Ruth also noted that the phone number for Dana on the BCA website was incorrect. (Now corrected and Tracey's contact info has been added.)
- Use factual information. When others didn't understand what this meant, Ruth explained that people might be more willing to vote on assessments if the prices were exact and not estimates. A number of folks replied that we can't always do this because you can't always get an exact amount from contractors. Robin replied that it is still a suggestion that we can always strive to meet when possible.
- Ruth pointed out that more people vote now than have in the past. Sometimes it was 10, now we are up to 18 or so.

Steve Smith suggested simply having an "abstain" box along with "yes" and "no" for each motion in order to save paper, time and money and many verbally agreed.

REQUIRE ADVANCED NOTIFICATION OF CCR CHANGES

Kris Rattini suggested that we might make better decisions if we require advanced notification like other organizations do. It would give us a chance to really think things through before making changes. She made the following motion, seconded by Paul Stern:

Add the following paragraph to the end of Article I in the CCR: "These bylaws may be amended by affirmative vote by 66% of voting members at any annual or special meeting of the membership, provided ten days' written notice of the proposed amendment is given."

PET CONTAINMENT - Dana took a moment to remind everyone that our bylaws require that our pets stay within our own property boundaries (Article V-L). She acknowledged that most pets get loose accidentally now and then, but if yours is loose often, a neighbor might ask the trustees to fine you (VI-L). We would really prefer not to do that, so please do all you can to keep pets on your own property. (This is also covered by the Property Maintenance Code of St. Charles County, Section 205.)

DELINQUENT ACCOUNTS - Robin explained that the CCR has a very unspecific policy for how the trustees should handle overdue accounts. While trustees are allowed to record a lien on a home on the very first day a lot owner is delinquent, that would be ridiculous. However, the trustees understand that many residents feel the current practice is too lenient and would like input from the community as to what they feel would be more appropriate. For the past few years, the practice has been to extend grace to overdue homeowners until they reach \$750 overdue, because that used to be 5 quarters worth of payments and we were in an economic downturn with a number of residents unemployed. Ruth asked Gary Pearia to explain how the Lake Saint Louis subdivision he lives in handles this type of situation. Gary responded that they will actually write a ticket to homeowners who have not paid their dues unless you have worked out a payment plan with them.*** Many people offered suggestions at the same time and all were suggesting that the collections process start sooner, so Dana funneled what she was hearing into following the suggestion: So when a homeowner is overdue by two quarters' worth (amount will differ depending on what dues have been) the trustees should begin contacting the homeowner by certified mail to see if a payment plan can be worked out. If the owner does not call us within 30 days, we will attempt to call them. If we do not get any response, we should proceed toward filing a lien on the property. A bunch of people said "yes, that sounds good". So that will be the practice of the trustees going forward. (There is no need for a vote on this matter because it is already covered under current trustee authority.)

*** **If you are a homeowner who is already overdue**, please rest assured that your trustees are not after you! We understand that the rules have just changed on you and will try our best to be fair. Just be proactive and give one of us a friendly call to let us know how you plan to overcome your situation and if there is any way we can be of assistance.

FUTURE ROAD MAINTENANCE PROJECTIONS - Bob Ottinger was going to explain the future potential costs of road maintenance, but it was dark and there were no motions to make anyway. The green sheet included with the minutes is ONLY to remind everyone of potential assessment needs years in the future.

Meeting was adjourned at 7:47 p.m.

Respectfully submitted,
Robin Barton, Secretary

ADDITIONAL INFORMATION SINCE MEETING:

Ruth's motion has been attached as the next page.

ELECTRONIC COMMUNICATIONS - We did not have time to cover this during the meeting, but would prefer to send communications electronically whenever possible. It will save money, time and trees! Some things have to be mailed (as per the CCR), but some can be posted on NextDoor.com (minutes are always posted on the website as well, but that's public whereas Nextdoor is private). Please join Nextdoor so that you can receive BCA notifications earlier and more effectively. You will not be giving out your email address to everyone. You just join and Nextdoor privately forwards any posts to your email. If you not already joined, there is a private invitation included in the envelope with these minutes. Once you are in, read the recent post about how to sign up to stop receiving paper notifications. Thanks!

TRASH SECURITY UPDATE - Dana has put Robin's game camera back up to try and capture images of outsiders using our dumpsters. Dana may make "We're watching you" flyers of non-BCA vehicles. However, we first have to be able to determine which vehicles ARE from BCA. We are also looking into installing a motion sensor light before taking the next step.

AUDIT COMMITTEE - Whether or not this is required by the CCR, the trustees have been considering asking for volunteers to do this anyway. After the meeting, it came to our attention that Connie Smith has experience in this area, so she has been asked and is willing to serve in this capacity. If anyone else would be interested in helping, please contact Tracey Huff at tracey.henry88@gmail.com.

TRUSTEE BONDING - Ruth is correct in that our CCR does say the Treasurer needs to be bonded, whereas we currently have insurance. Trustees are looking into where to best purchase this type of service.

LAKE SAINT LOUIS The covenants for Lake Saint Louis were found online and have this section about overdue assessments:

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of six (6%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action

DEHUMIDIFIER Dan and Dana have already taken care of getting the dehumidifier off the floor in the pump house.

I, Ruth Intlekofer, propose the following changes be made to the current Covenants, Conditions, and Restrictions (CCR) and be properly filed with St. Charles County:

Delete: Current Article VIII A: ASSESSMENTS

A. The initial annual assessment shall be \$600.00 per lot beginning in 2010, billed quarterly, provided, however, that such assessment may be increased for any assessment year by an amount which is equal to the percentage increase in the Consumer Price Index for All Urban Consumers, All Items Figure as published by the United States Department of Labor Statistics, as indicated by the last available Index published prior to the assessment year over the corresponding last available Index published prior to commencement of the first assessment year hereunder. The Trustees may, after consideration of current costs and anticipated needs of the lots subject hereto, fix the actual assessment for any year at less than the maximum herein authorized. Trustees will only be required to pay half (50%) of the current annual assessment during their trustee term, with such discount not to exceed \$200.

Proposed Article VIII A:

A.(a) Annual Assessment for Calendar Year 2015 is \$600 per property, of which \$300 due by March 31, 2015 and \$300 due by June 30, 2015. This assessment will be used for normal operating business for snow removal, signage, postage, office supplies, trash, federal income tax, annual licenses, dam and common ground mowing, water maintenance, water testing, DNR, and electricity for the pump house. This assessment does not include money for the cost of construction, reconstruction or replacement of a capital improvement of the dam, any street, drive, walkway, other right-of-way or installation and payment of any lighting.

A.(b) Vote on Tax Election under Revenue Ruling 70-604 will be completed every year at the annual meeting beginning with the annual meeting held September 2015, unless annual meeting dates are changed in the CCR at which point the annual voting month may change. When assessments received are greater than normal operating expenses and when property owners have voted in compliance with Article III regarding Revenue Ruling 70-604, the excess money will be moved to a Reserve Fund. Money in Reserve Fund can only be moved to normal operating fund. Property owner approval based on Article III must occur before any movement of funds. Reserve Funds are not to be used for special assessment items, including the cost of construction, reconstruction or replacement of a capital improvement of the dam, any street, drive, walkway, other right-of-way or installation and payment of any lighting.

A.(c) At each annual meeting, a group of three property owners will be identified to complete an internal audit of the BCA financials. All documents will be provided in hardcopy format for review. The three property owners will not be held responsible and are not liable for any errors made by BCA Trustees.

A.(d) Trustees will only be required to pay half (50%) of the current annual assessment during their trustee term, with such discount not to exceed \$200.

Overview:

The intent of this motion is to start each year of income based on that year's assessments.

- 1. Have all assessments paid BEFORE the start of the BCA financial year. In this scenario, income and expense budget for BCA begins Jan 1 and ends Dec 31 each year which is what the current financial review indicates. Ideally in 2015, the budget plan for 2016 would be identified in July 2015 and all property owners would be notified of the annual assessment at that time, allowing them 6 months to plan accordingly. The 2016 assessments would all be due by Jan 31, 2016.*
- 2. All property owners would pay annual assessments each year. For property owners not paid up to date, any money paid from January 1 2015 and thereafter will be credited toward the 2015 association fees. The amount they are behind on will continue to accrue interest. Trustees need to take action to collect those amounts and apply them as such.*
- 3. To decrease postage and office expenses, one billing per year is all that needs to be made. Property owners can call Tracy Henry, Treasurer if they have questions regarding any late or outstanding charges.*
- 4. Article VI J of the CCR requires the Treasurer to be bonded.*

It is recommended that Tax Election be done at each annual meeting so that is the reason to be included in the Assessment section. Basically each year, property owners should decide if excess assessment money be refunded to them or carried into the next year. Although there is not a Reserve Fund currently in BCA, a Reserve Fund would be available for emergency funding of normal operating expenses. All other expenses need to be processed in accordance with CCR Article VIII B—Special Assessments. Any movement of money out of the Reserve Fund requires advance approval by property owners.

As for the annual review of financials, this was a past practice for the protection of the Association and to ensure compliance of the CCR. It was eliminated from the CCR in a prior update.

EXAMPLE 2015

Income:

31 households X \$600 = \$18600 – (trustee discount of \$200, two trustees chose not to receive the discount) = \$18,400

Expenses: taken from Financial Review, Budget Projection, at Sept 2014 annual meeting.
\$14,870

Net: +\$3530 (this amount may increase if money due from lot owners is collected)

How Do You Explain Revenue Ruling 70-604 To Your Homeowners' Association Members?

By [Gary A. Porter](#) | Submitted On June 20, 2013

I receive more questions on Revenue Ruling 70-604 than on all other tax issues combined. One of the questions that continually arises is, "How do we inform and educate our members that they can vote on this important ruling?"

I recommend putting some descriptive wording on the ballot so that the members have a basic understanding of the Revenue Ruling. An example of such wording follows.

Revenue Ruling 70-604 is a tax ruling only. The purpose of this ruling is to allow a homeowners' association to avoid taxation on any excess member income (as defined in the Internal Revenue Code) that may inadvertently arise in a given tax year. The ruling states that the members of the Association meet to make the election. The ruling applies to any excess member income. The ruling allows two options only; refund the excess member income to the members or apply the excess to the following year's assessments.

The Board of Directors has determined that it is impractical to attempt to refund the excess member income because of the administrative issues involved and the fact that the excess member income may be needed as working capital to pay for continuing Association operating expenses. Therefore the Board of Directors requests that you approve an election under Revenue Ruling 70-604 to apply any excess member income to the following year's assessments. This does not mean that the assessments for next year will be reduced, as the budget has already been prepared and approved. Since expenses typically rise year-to-year, it is probable that any excess member income will be absorbed by an increase in expenditures.

Your failure to approve this election may mean that the Association will be subject to additional federal income taxes for the current year, which will cause a rise in assessments for all members.

My advice to the Association and the governing board is that the ballot be drafted with only a single option, which is to apply the excess member income for the following year's assessments, and that a yes or no vote be what is presented to the members.

The wording above explains why the Board of Directors is presented only a single option. To be silent on this issue and explain both options would force members to make a decision which could result in a majority of members voting to refund any excess member income. This creates a difficult situation for the board, as that excess in income may represent working capital that is necessary to operate on a continuing basis. Without adequate working capital, the board would be forced to either borrow funds on an expensive short-term basis or to make a special assessment of members for working capital.

For the hundreds of associations with whom I have discussed this issue in the past, you will probably recall that I have stated that, in my opinion, on which I have received verbal concurrence from the national office of IRS, Revenue Ruling 70-604 as drafted, requiring approval of the members, is generally in conflict with the governing documents of most associations and with state law. To the best of my knowledge, statutes in all states vest the authority to make financial decisions regarding the disbursement of Association funds in the hands of the elected board of directors. The general membership normally does not have authority to make such a determination. Therefore state law is generally in conflict with Revenue Ruling 70-604.

So how do you resolve this apparent conflict? In my opinion it is relatively simple, although it requires little work. First of all, go ahead and have the membership approve the election at the annual meeting, or in any other meeting or format in which a valid membership vote occurs. Second, have the Board of Directors meet and ratify the election approved by the membership. By handling the Revenue Ruling 70-604 approval process in this manner, you first, meet the requirements of the IRS and second, meet the requirements of state law.

Can you skip the member approval and simply have the Board of Directors make the election? In my opinion, yes you can. However, to do so is to invite a challenge by the IRS. And that is a battle that you don't need to fight. It is so simple to get the member approval to make the election that it is best to simply get member approval and avoid a potential fight with the IRS.

Gary Porter, CPA, RS, PRA, has been working in the community association industry for more than 30 years. As a CPA, he has performed thousands of association audits, and prepared thousands of association income tax returns. He has specialized in the preparation of tax exemption applications, and has successfully taken more than 70 associations tax exempt, at a cumulative tax savings of millions of dollars. He is the primary author of PPC's "Guide to Homeowners Associations" and "Homeowners Association Tax Library," which serve as the principal guides used by CPAs within the community association industry.

As a reserve preparer, he has performed hundreds of reserve studies since 1982, and is author of the 1988 book "The Reserve Study Manual."

Mr. Porter is a past national president of CAI, and a member of the Association of Professional Reserve Analysts. Visit <http://www.hoapulse.com> to read more of his articles.

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