

**BANYAN HARBOR TIMESHARE ASSOCIATION
SPECIAL BOARD MEETING
Thursday, January 24, 2002 / 9:00am (Hawaii time)
TELECONFERENCE**

1. Roll Call / Call to Order

The teleconference was called to order at 9:00am (Hawaii time)

Board Members

Jim Solberg, President
Bob Garcia, Treasurer

Loren Knott, Vice President
Sharon Baker, Secretary

Absent

Ed Madamba, director

Outrigger Lodging Services

Chris A. Gampon, General Manager, Banyan Harbor
Stephanie Nakamatsu, Accounting, Banyan Harbor
Tore Wistrom, Resort Consultant

2. Tax Assessment

Prior to the meeting tax assessment worksheets were distributed to all teleconference participants.

Jim reported that based on the material received an assessment of at least \$105 per interval will be necessary. The means used to collect the assessment and the final amount collected will have to be decided during this meeting.

Tore reported that, although initial updates indicated that penalties might be waived, neither he nor Chris has approached the State to request an adjustment. Before doing so the Board will need to confirm that they will acknowledge the assessment and not pursue an appeal. Tore contacted ARDA attorney Mitch Imanaka for his advice on payment or appeal of the tax assessment. Mitch clearly indicated that the tax should be paid. If the Board concurs, it must authorize further contact with the State to ask that it reduce or eliminate penalties currently assessed.

Bob asked why the annual audit did not identify the need to pay this tax. Loren reported that the last, and previous auditors shared the opinion that the Timeshare Association was exempt. Loren indicated that the General Excise Tax Law was not clear as it relates to timeshare associations as opposed to whole-owner associations. Loren does not agree with the State's position but based on the recommendation of Mitch Imanaka the tax should be paid.

Jim advised that by accepting the liability there is a good chance of not being assessed penalties. He feels the assessed tax should be accepted and that management should be authorized to request that the penalties be waived. Bob Garcia agrees, noting if this is contested, legal fees are likely to be substantial.

Chris reported that if the tax were to be contested, the appeals process requires the full amount of the tax be paid prior to the court hearing the case. Since no money was collected for this purpose and no surplus funds exist, this is not an option.

MOTION: *To accept the tax liability and authorize management to request that the penalties are waived.*

MOVED BY: Sharon Baker, Second: Bob Garcia
VOTE: Loren Knott: **Yes**, Bob Garcia: **Yes**, Sharon Baker: **Yes**
Jim Solberg, **Yes** Ed Madamba: **Absent**
PASSED

Tore reported that the Board will need to decide on how this will be collected. During prior discussions, the Board indicated it might want to spread the collection over more than one-year as opposed to sending out one special assessment with the full amount due. Bob and Loren would like to collect the full amount with one assessment. Bob reported we would have to consider interest that will accrue as well as delinquency rates when determining the assessment amount. Loren suggested \$110 per interval as a collection amount. Bob agreed noting that any excess funds collected should be earmarked to bring down the principal of the renovation loan.

MOTION: *To levy \$110 per interval to pay the tax assessment. Any excess collected to be applied to the renovation loan principal balance.*

MOVED BY: Bob Garcia, Second: Sharon Baker

DISCUSSION: Jim suggested a due date of 45 days from the assessment date. Jim would like a letter to accompany the assessment invoice; he asked that this be drafted for his approval.

VOTE: Loren Knott: **Yes**, Bob Garcia: **Yes**, Sharon Baker: **Yes**
Jim Solberg, **Yes** Ed Madamba: **Absent**
PASSED

Hearing no further business, the teleconference was adjourned at 10am (Hawaii time)