

Kahler Glen Community Association Special Board of Directors Meeting

Discussion of relations with
the Kahler Glen Golf & Ski Resort
20 February 2013, 4:00 PM [PST]

1-213-342-3000 Passcode 5307453

Special Board Meeting Agenda

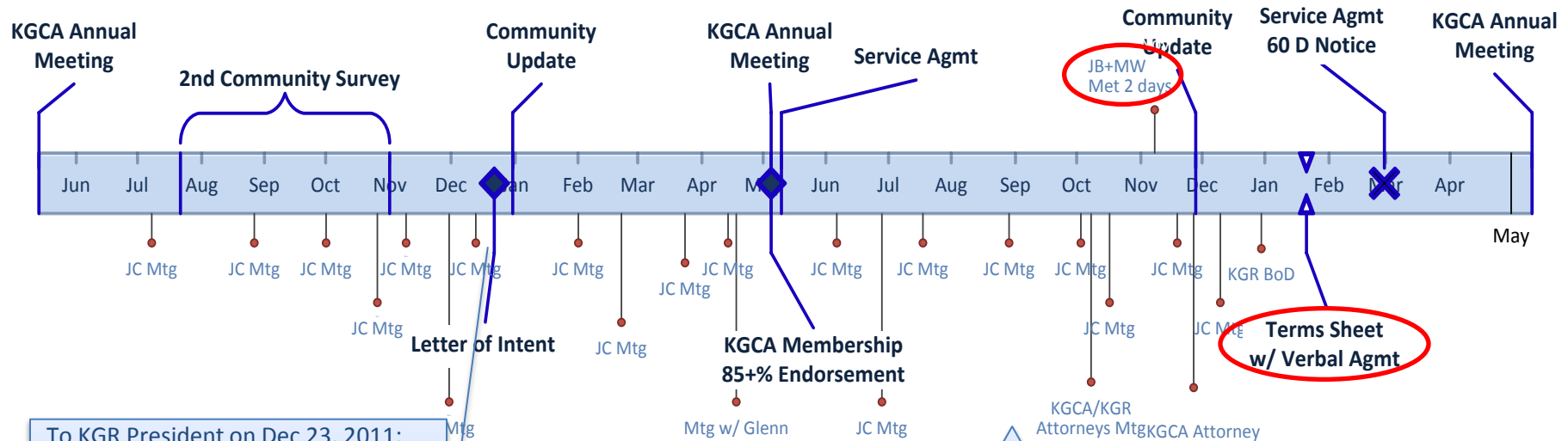
The KGCA Joint Committee's Goal:

Gain KGCA sovereignty ('the vote' and assurance of uninterrupted essential services and amenities) while supporting the commercial viability of the Resort to achieve a more harmonious community.

1. A Very Brief History of a Whole Lot of Discussion
2. Last Agreed to Terms & Conditions
3. Terms & Conditions Revised by KGR Following Agreement
4. Concerns about LLC Response
5. Plan B
6. Future Direction



A (Not So) Very Brief History...



To KGR President on Dec 23, 2011:
 "...re your two suggested edits , the first (a) is a non-starter because it completely equivocates on the community's pivotal issue, and second, (b) contradicts the conclusion and understanding we reached yesterday. We cannot accept either."

Remember that KGR has already benefitted from this process in (1) having a more lucrative service agreement, which was (2) paid retroactively to Jan 1st 2012 through Apr 30th 2012

Summary of Last Agreed to Terms & Conditions

- Vote** Voting will be based on one vote per lot, condominium unit or assessing unit. KGR will have one vote for its properties other than its platted lots and one vote for each platted lot it owns.
- Contract** Contract with properly restated "master KGCA documents" (Covenants, Bylaws and Articles of Incorporation) to describe and guarantee the primary interests the KGCA and KGR, capable of surviving failure, default and/or bankruptcy of KGR.
- 25 year recordable easement for use of KGR properties for septic fields, utilities, domestic water infrastructure, winter recreational access, and domestic water sources by the KGCA homeowners.
 - KGR's approval for the timing, location, and restoration of above-ground property to its condition prior to use.
 - KGR net benefit of \$31,977.25 per year (\$6660 as a reduction in CA annual assessments from 10 to 7, \$2500 backed out of the Service Agreement, and annual lump sum of \$27,877.25 before the anniversary date for 25 years)
 - Total payment of \$696,931.25 in addition to Service Agreement payments.
 - At the end of the term, rights described are conveyed, and KGCA will continue to pay 50% of the KGR and common property taxes in perpetuity.

Summary of Last Agreed to Terms & Conditions

Winter Recreation

Rights to use Resort properties when covered by sufficient snow depth for X-C skiing grooming, snowshoeing, & sledding. All costs of KGR to repair damage caused by such winter recreation uses will be reimbursed to KGR under the Service Agreement. The winter recreational use easement will continue in perpetuity unless such use materially interferes with a different property use (i.e., not a golf and ski resort) of current or future owners.

KGR's Assessing Units

KGR's property, other than its platted lots, will be one assessing unit. Any new platted lots will be exempt from assessments for 24 months after platting.

Infrastructure

The infrastructure comprising the septic and domestic water systems and the roads will be transferred to the KGCA but underlying real estate will continue to be owned by KGR.

Water Rights

The water rights will continue to be owned by KGR but access to domestic water and use of Resort property for domestic water infrastructure for the purpose of providing water to single family residences owned by the homeowners will be assured under the terms of the Contract, Restated Governing Documents, and Service Agreement. Payments for domestic water will continue to be based on cost of providing it.

KGR Business & Deed of Trust Protections

The governing documents and the Contract will be written in a manner to assure the continued protection for KGR business operations and equity (note: KGCA has no interest in interfering with, or impeding, the ability of the LLC or the Deed of Trust holder to manage their business or utilize their property in a manner that provides the best return on investment for the LLC shareholders; quite the contrary, the KGCA seeks an agreement which improves the financial stability of the LLC and the viability of the Resort).

“Right to Cure.” KGCA, at its sole option, the right to cure financial default by KGR.

Terms & Conditions Revised by KGR after Agreement

KAHLER GLEN TERM SHEET
January 19, 2013

Contract

Representatives of Kahler Glen Community KGCA (the KGCA) and Kahler Glen Golf and Ski Resort (KGR) and the Kahler Glen Golf and Ski Resort (KGR), (the "Joint Committee") (the "Joint, Kahler Glen Golf and Ski Resort (KGR) the Joint Committee"), have been meeting for many months to work through various issues relating to governance of the KGCA and provision of services to the KGCA by KGR. The following is the revised terms sheet intended to outline the areas of agreement reached ~~thus far~~ on Saturday, January 19, 2013 by the Joint Committee. The agreement will be reflected in the restated revised Kahler Glen governing documents and the contractual agreement (the "Contract") to be approved by the governing bodies of the KGCA and KGR (the "Governing Bodies") and submitted for approval to the members of the KGCA, and KGR investors, and deed of trust holder, and in and other agreements or instruments to be approved by the Governing Bodies for approval.

NOTE: I DID MY BEST TO BOTH CAPTURE OUR AGREED-TO PRINCIPLES AS WELL AS HARMONIZE THE TERMS AND CONDITIONS. THIS TERMS SHEET IS BEING FORWARDED TO THE KGCA ATTORNEY FOR FINAL LANGUAGE AND LEGAL STRUCTURE.

I did my best to understand the changes and make changes as needed. We all need to have a straightforward approach or noted in our letter. Why are we paying attorneys at this time? We need to agree on the basics first and get approvals of investors and Kahler owners.

The basic agreements include four items:

1. The vote change would be one vote per lot, or Condominium unit, (excluding garages), starting May 1, 2013.
2. A KGR five-year service contract automatic renewal feature, starting May 1, 2013.
3. The KGR Infra-structure (domestic water, septic systems) transfer effective May 1, 2013.
4. Easement rights contract 5-to-25 year (water, roads, and limited land use) made permanent following a 30 year contract starting effective May 1, 2013.

More detail is provided below and will be clarified in the revised Covenants and By-laws.

Vote

Voting will be based on one vote per lot, condominium unit (excluding garages) or assessing unit. KGR will have one vote for its properties other than its platted lots and one vote for each platted lot it owns.

At any Annual or Special KGCA meeting, KGR will will deliver a proxy statement to the KGCA Board Secretary designating the representative(s) authorize to vote on their behalf, of KGR. Note: It was agreed that it would be useful to add a condition that only members in 'good standing' be able to vote in KGCA Annual or Special Meetings.

Assessing Units

Each platted lot or condominium unit (excluding garages) will be one assessing unit. KGR's property, other than its platted lots, will be one assessing unit. All new platted lots will be exempt from assessments for 24 months, after platting or conveyance of the lot, whichever comes first. If the restaurant is sold and a new lot is created the new owners will pay for services used (water, septic etc).

KGR and KGCA will enter into a legally binding Contract with properly ~~amended~~ restated revised "master" KGCA documents (Covenants, and Bylaws and Articles of Incorporation) to describe and guarantee the primary interests the KGCA and KGR, capable of surviving failure, default and/or bankruptcy of KGR. In the event of failure of KGCA to meet its obligations under the Contract, the Contract and the KGCA restated revised covenants will describe KGR's remedy to reestablish the rights and obligations of the deed of trust holder existing prior to the Contract, the restated revised CO&Rs to the deed of trust holder, and restated Articles of Incorporation.

The Contract will define a 25-30 year recordable easement providing for use by the KGCA and the owners of lots or units in Kahler Glen ("homeowners") of KGR properties (other than its platted lots) for septic fields, ingress and egress, utilities, domestic water infrastructure, winter recreational access, and access by homeowners to KGR's domestic water sources (enabled through water rights owned by KGR) as required for single family residences located within the Kahler Glen. KGCA and Homeowners will require KGR's approval for the timing, location, and restoration of above-ground aboveground property to its condition prior to such use. KGR's approval for such use shall not be unreasonably withheld, and in addition, any work or activities performed by KGR on behalf of KGCA shall constitute an implied approval under this easement.

Under the Contract, in consideration for easement(s) for infrastructure and and winter recreation, conveyance of any ownership in infrastructure components, and agreeing to the restatement revision of KGCA Governing Documents, KGR will realize a net benefit of \$32,037.25 per year. Of this amount, \$6660 will be a credit for the reduction of KGCA annual assessments from 10 to 7, plus a \$2500 payment will be backed out of the Service Agreement and added to the annual Contract payment. Therefore, KGCA will pay an annual lump sum of \$30,377.25 to KGR per contract year on or before the anniversary date for 2530 years, representing a total payment of \$759,434.25 \$36,317 over the term. The net revenue to KGR under the Contract will be \$30,000 per year (inclusive of other adjustments detailed in the agreed financial spreadsheets), the net amount payable as a lump sum on the date of execution of the agreement and subsequently prior to each anniversary date thereafter for the term of the agreement. The Contract payments will be in addition to any payments covered in the Service Agreement.

The Contract will state that it does not extinguish any existing easement rights of the owners over to KGR property (for access utilities (including septic and domestic water) and acknowledge that upon financial fulfillment of the contract (including prepayment) of the Contract, the easement rights of the owners KGCA will be owned in perpetuity. However, at completion the end of the Contract term and at such time the Contract is fulfilled and ownership of the rights described herein are conveyed, the KGCA will continue to pay 50% of the KGR and common property taxes in perpetuity.

Terms & Conditions Revised by KGR after Agreement

Service Agreement

The KGCA and KGR will ~~enter into~~ sign a five year Service Agreement of ~~a five year term~~ with CPI inflation adjustment clause and automatically renewable for additional five year terms unless a termination notice is given by either party to the other party 180 days prior to each five year renewal date. The Joint Committee will negotiate the terms of the revised Service Agreement so that it is ready for approval in connection with the approval of the ~~Amendments Contract~~.

~~Among the issues to be address are optional adjustments in service levels 60 days prior to each annual anniversary date, service levels metric and cure in the event of non-achievement, grounds for termination due to substandard performance, and provisions for obtaining alternative providers of services. The agreement will be "all or none" except that it will further define "essential and non-essential" services, and KGCA will only have the ability to source alternative vendors in the event of 10 days substantial nonperformance by KGR.~~

Renewal or continuation of the Service Agreement in the event of significant non-performance of the KGR will not be linked to other rights and benefits described herein.

Preparation of Amendments Contract

The ~~Amendments Contract~~ and other agreements or instruments, including the ~~Contract and the~~ (revised) Service Agreement will be drafted, ~~by the KGCA or the KGCA's lawyer~~. The KGCA will reimburse KGR up to \$2,000 of its expenses for review of the documents by KGR's attorney.

Winter Recreation

The Resort will continue to offer winter recreational opportunities (sledding, snowshoeing, and XC skiing) on designated areas of Resort properties and include assurances to this affect, with the following conditions. 1) The Resort will designate properties for winter recreation purposes and retains the right to change these designated areas. 2) The KGCA will contract with the Resort for grooming and maintaining areas it designates. 3) Only the Resort will be able to contract with the State or other third parties to perform work on Resort property. Will be covered by the KGCA's service agreement on a year-by-year basis as in the past. With cross-country trails, sledding hills and snow shoeing routes. Trails will be established by the Resort to minimize damage to its property and include agreements with the Lake Wenatchee state parks or a sub-contractor to the Resort. With established 30 K of trails. It also includes the use of Longview fiber land access agreements and KGR pass through agreements. Contract or CC&Rs will include rights for the homeowners to use designated Resort properties when the properties are not useable for golf and are covered by sufficient snow depth to permit grooming for X-C skiing (including connections to State maintained trails), snowshoeing, & sledding. All costs of KGR to repair damage to KGR's properties caused by such winter recreation uses will be reimbursed to KGR under the Service Agreement. The winter recreational use easement will continue in perpetuity unless such use materially interferes with a different property use (i.e., not a golf and ski resort) of current or future owners.

Infrastructure

The infrastructure comprising the septic and domestic water systems and the roads will be transferred to the KGCA but underlying real estate will continue

Water Rights

to be owned by KGR.

The water rights will continue to be owned by KGR but access to domestic water and use of Resort property ~~for to maintain~~ domestic water infrastructure for the purpose of providing water to ~~single family residences owned by the homeowners community as seasing units~~ will be assured under the terms of the ~~Amendments, Land Lease Contract, Restated revised Governing Documents,~~ and Service Agreement. Access rights to the infrastructure shall include the right to make repairs and improvements provided KGR's property is restored and they are done with KGR approval and in such a way as to minimize impact on KGR's businesses activities. Payments for domestic water will continue to be based on cost of providing it.

KGR Business & Deed of Trust Protections

The governing documents and the Contract will be written in a manner to assure the continued protection for KGR business operations and equity (note: KGCA has no interest in interfering with, or impeding, the ability of the LLC or the Deed of Trust holder to manage their business or utilize their property in a manner that provides the best return on investment for the LLC shareholders; quite the contrary, the KGCA seeks an agreement which improves the financial stability of the LLC and the viability of the Resort).

In addition to KGCA making payments to secure its interest in holding and using the votine and easement rights described herein the Contract will provide

Winter Recreation

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Some Concerns about LLC Response

No winter recreation easement because Glenn says 'no,' in spite any evidence the "deal" would devalue the property.

KGCA legal opinion is that he does not have a legal right to interfere, and KGCA has offered to indemnify the LLC against any action he might bring.

Under the terms and conditions most recently revised by the LLC, KGCA MUST use KGR to do the grooming under a 5 year, no-bid, no-cherry picking sole source Service Agreement - essentially forcing KGCA to pay whatever they ask or going without grooming.

Without the winter recreation easement, the claimed benefits for the amount to be spent are just not worth it...

- Access to water – KGCA has that today
- Easements to maintain infrastructure – KGCA has that today
- Access to additional land if needed for new septic fields – KGCA has that today
- Access to designated Resort properties for winter recreational opportunities – KGCA has that today

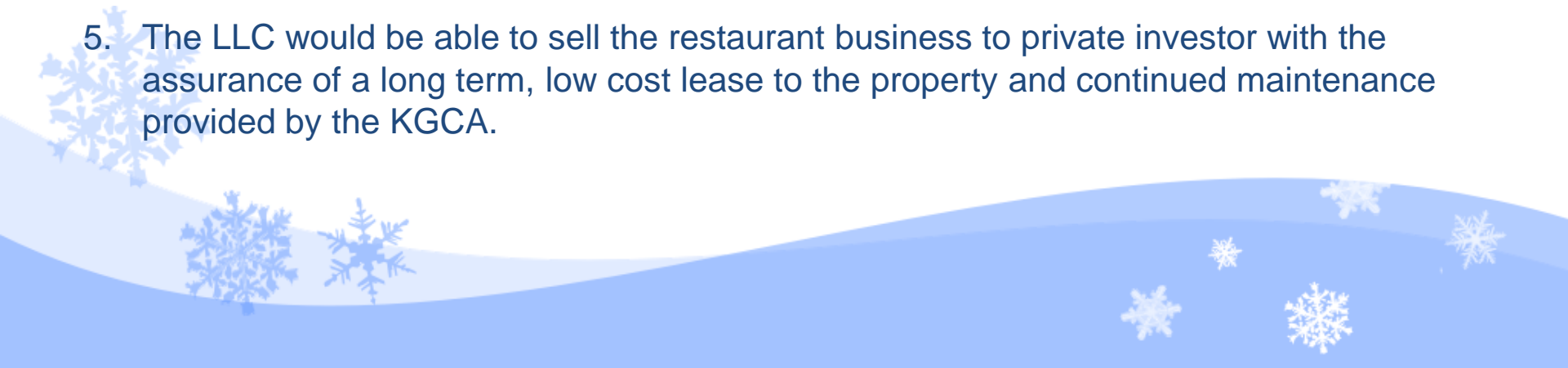
Note: we did not take the easement off the table, Tom & John B did...

4. The amendments to the Governing Documents should be drafted to KGR's obligations under the Deed of Trust. ~~The two parties will consult their respective legal counsels to determine if there is a mechanism where the LLC and the Board of Managers assist (i.e., indemnify (TPG 1)) KGR in any legal challenges from and judgments on behalf of the Deed of Trust holder.~~

John, 11/1/2012 4:46:00 PM commented:
Indemnification clause is not needed with Glenn's agreement.

Plan B

1. KGCA would obtain title to, hold and maintain the all of the development land used for golfing, all undeveloped resort land, resort roads, and all easements associated with the golf course land, utilities infrastructure, and all water rights. Any newly platted lots would be sold for the benefit of the KGCA to pay down its debt.
2. The KGCA would finance purchase by obtaining bank loan for the net purchase price and assume responsibility for paying off the note over a 20 year term (~4.25% interest).
3. The golf business would be retained and operated by the LLC along with all the inventory, golf carts, equipment, etc. KGCA would hold a security interest in the golf course infrastructure to assure the LLC continues to operate the course.
4. The LLC and KGCA would enter into a long term lease agreement specifying that the LLC would continue to operate the golf business and be responsible for maintaining the course during the golf season, while KGCA would be responsible for maintaining everything other than the golf course during the golf season, and all maintenance during the winter months.
5. The LLC would be able to sell the restaurant business to private investor with the assurance of a long term, low cost lease to the property and continued maintenance provided by the KGCA.



Plan B (cont.)

6. The LLC would retain title to the currently platted unsold lots along with the cart barn (including space for a new pro shop), the 'events center,' and the maintenance facility.
7. The LLC would retain or assign property rental services, condominium maintenance services, private home maintenance, etc.
8. The KGCA would continue to provide community infrastructure services, as required by the CC&Rs, provided by vendors it would select. A Property Manager would be retained by the KGCA to manage the delivery these services.
9. The LLC and KGCA would equally share the payment of property taxes in perpetuity (although the taxes might be less as a result of the property being held in common by a nonprofit entity).



Deed of Trust Holder Consent & Indemnification

Reply from Gary Ackerman, KGCA Attorney, Sept 10, 2012

I have review the deed of trust and purchase and sale agreement and discussed with others in my office (real estate finance lawyers) the issue of whether the consent of the developer of Kahler Glen, as beneficiary under the deed of trust, is required to reduce or eliminate the voting rights of the owner of the resort as owner of the golf course and athletic club. We conclude that the consent of the developer is not required.

There is nothing in the deed of trust that restricts the ability of the owner of the golf course from agreeing to amend the CCRs. There is a general statement obligating the grantor to "comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the property" but this do not state or mean that those covenants cannot be amended - pursuant to the covenants. The CCRs permit amendments.

The CCRs themselves do not contain a requirement for lender approval. Many do, but these do not. We would be surprised whether the consent of lenders on property in Kahler Glen was obtained for any of the earlier amendments to the CCRs. In this context, the lender on the golf course is no different from the lender on any lot or other portion of the property.

The purchase and sale agreement is silent on this issue, although it does state that the developer is assigning its membership rights to the buyer. Unless the purchase and sale agreement provides that a provision survives closing, the only relevant documents would be the deed, deed of trust and promissory note. I have not seen the promissory note, but it would be an unlikely place to include a restriction on amending the CCRs.

Regardless, if it can be demonstrated that the amendments in total are as much for the benefit of the resort as they are for the lot owners and will, if anything, enhance the ability of the resort to pay off the debt on its property, any refusal to grant the consent could be considered as unreasonable.

We could add a provision to the CCRs that the relinquishment (or reduction) of the resort's voting rights would not be effective if the developer reacquired the golf course (through foreclosure or deed in lieu of foreclosure), although if we do that, we might also want to make any changes that were for the benefit of the resort not effective as well.

So, we believe that you can proceed with the amendment on the assumption that you will not need the developer's consent. You can tell the developer this or not as you wish. If you tell him you do not need his consent, that might force him to take some action or be deemed to have waived his rights to object. If you tell him, you could ask for his consent to the entire amendment and acknowledgement that it would be effective even in the event of foreclosure.