

MINUTES OF COUNCIL MEETING
STRATA PLAN LMS-3432
THE PARK

HELD: On Monday, October 26, 2009 at 6:00 p.m. in the Amenities Room of The Park, 1723 Alberni Street, Vancouver, B.C.

PRESENT:

Teri McEachern	President	#2402 - 1723
Mike Fong	Vice President	#1777 (TH)
Ingrid Northwood		#2005 - 1723
Liz Faulkner		#1808 - 1723

REGRETS: Ravi Singh Security #1401- 1723

STRATA AGENT: Bunny Porteous, Vancouver Condominium Services Ltd.

The meeting was called to order at 6:00 p.m.

BUILDING MANAGER REPORT

Council reviewed the Building Manager's Report for the months of September/October with the following highlights:

- Service Master completed the spot cleaning of the common area hallway carpets as per the quarter annual maintenance contract
- Storage room areas cleaned and junk disposed of
- Parkade ramp and entrance to P2 hosed down
- Fire alarm system sounded on October 23rd and it was determined to be caused by a failed smoke detector on the 9th floor which has been replaced and the fire alarm system restored
- The irrigation system has been winterized and shut down
- Fire Pro Fire Protection completed the winterization of the dry sprinkler system in the parkade
- Milani Plumbing has completed the installation of the make up air unit which provides heat in the hallways
- Fire Pro Fire Protection was on site to review the ongoing fire alarm panel trouble signal and determined that a resident at 1737 Alberni had disconnected the fire alarm speaker causing the fire alarm panel to be in a continuous trouble state.

IMPORTANT REMINDER – FIRE ALARM SYSTEMS

Tampering with fire alarm systems in the building or residents' units could cause the system to malfunction which thereby could endanger many lives of the owners. Owners who cut the fire alarm speaker or disconnect the smoke alarm are in violation of the *Strata Property Act 4.2* which indicates "*A resident or visitor must not cause damage other than reasonable wear and tear to the common property, common assets or those parts of the strata lot which the strata corporation maintains*".

MINUTES

It was moved, seconded and carried to adopt the minutes of September 24, 2009 council meeting, as circulated

FINANCIAL REPORT

1. Monthly Statement: Following discussion, the council approved the September 2009 financial statements as presented. Any owner wishing a copy of the strata corporation's financial statements may contact Vancouver Condominium Services Ltd. during regular business hours, 9:00 a.m. to 4:30 p.m., Monday to Friday.
2. Account Balances: The current balances for the 12^h month ending September 30, 2009 in the appropriate funds are as follows:
 - Total Cash Balance \$1,659,106.84 (including CRF Balance)
 - CRF Balance \$ 81,845.28 (Contingency Reserve Fund)
 - CRF Joint \$ 187,666.78 (Contingency Reserve Fund)
3. Arrears: The agent advised council that payment has been received from five of the six strata units with liens filed against their strata lot for significant outstanding balances. The strata corporation's legal counsel has been directed to commence foreclosure action on the unit who has yet to submit payment.

4. Annual General Meeting:

- (a) Date: AGM has been scheduled for Wednesday, November 25th at 7:00 p.m. in the Amenities Room, 1723 Alberni Street.
- (b) Budget: The agent distributed an updated draft budget for council's review for the upcoming fiscal year end commencing October 1, 2009. Council reviewed and approved the budget pending any significant changes once the audit has been received. The draft budget and audit will be attached to the AGM notice.
- (c) Agenda: The following $\frac{3}{4}$ Vote Bylaw Amendment Resolutions will be presented to the owners:
- Rental Bylaw:
 - Illegal Use of Strata Lot
 - Permit Entry to Strata Lot
 - Council size
 - Exterior Maintenance Project/Additional Funding

BUSINESS ARISING

1. Exterior Maintenance Project: An Information Meeting for the owners was held on Wednesday, October 21st 2009 to review the additional funds required to complete the Exterior Maintenance and Repair Project. Mr. Joe Hoy and Mr. Shakir Rashid from Levelton Engineering presented a review of the contributing factors for the increase in funds. A tender was submitted to five qualified contractors to submit bids for the townhouse repairs. Based on the lowest bid for the contracted work along with a 15% contingency fee and engineering consulting fees resulted in \$2,100,000 which is an increase the funds raised at the AGM on November 27, 2008.

A $\frac{3}{4}$ Vote Resolution will be presented to the owners to raise an additional \$1,450,000 to complete the exterior maintenance project. Residents are highly recommended to attend the AGM on November 25th at which time Levelton Engineers will be present to discuss and answer owners' questions and concerns.

Owners are asked to carefully read the AGM notice as it contains important information on the resolution of the exterior Maintenance Project.

Below is an outline of the Budget Funding Strategy Chronology presented to the owners at the Information Meeting on October 21, 2009:

November 5, 2008:

- * Information meeting held to review Building Condition Survey and townhouse investigations with Levelton.
- * Levelton identified critical areas on the tower requiring maintenance and minor repairs that should be completed within the next fiscal year to prevent premature deterioration of the building materials, water ingress and related damages to maximize the longevity and integrity of The Park. Estimated repair cost about \$105,000.00.
- * Levelton recommended, after water testing since the Condition Assessment Report dated July 22, 2009, that a global repair/replacement to the balcony membranes, patio doors, and windows of the townhouses.
- * Additionally, Levelton recommended to proceed with Parkade Slab work to repair concrete cracks and mitigate active leaks.
- * Levelton made it clear that additional investigation of the townhouses would be necessary before they could determine exact scope required.

January 12, 2009

- * Levelton issued a Letter to Strata suggesting the First Priority – repair and remediation work to the Townhouses; Second Priority – maintenance work to the Tower; Third Priority – repair work to the Parkade.

June 17, 2009

- * Levelton issues a Design Brief outlining critical recommendations and options for the Strata Council decision and selection to fine-tune the scope of work before further design work is completed.

July 7, 2009

- * Levelton met with the Vancouver Condominium Services and the Strata Council representatives to discuss the design brief and finalize decisions on scope of work, material choices, etc.
- * The Strata Council determined that additional work is to be included as recommended and presented which are beyond that presented in the November 5th meeting. These items are to be priced as part of the base bid, alternative prices and separate prices.

THE PARK

Critical differences from November 5, 2008 Information Meeting scope of work compared to the scope of work today:

Economy of Scale Additions to Scope:

- * The entire ground level waterproofing at the north decks including window and door replacement was added.
- * Replacement of operable windows not included in the proximity of the re-waterproofing work i.e. Over front entry as subsequently reported leaks.
- * Repairs required to waterproofing entrance staircase adjacent to the bathroom following subsequent investigations and based on subsequent reported leaks.

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Summary: Contributing factors for increase in the budget from November 5th 2008 to Now:

1. Economies of Scale by integrating related risk items to realize larger term savings on future mobilation set up costs, inflation and re-tendering.
2. Unexpected rise in window prices contributing alone to about \$400,000 of bid due to lack of window sub-trade bid submissions.
3. Requirement of brick removal and re-installation in order to remove doors and windows (approximately \$130,000.00).
4. Requirement of existing guardrails and re-engineering as such to facilitate deck perimeter membrane replacement (approximately \$10,000.00).
5. Expected competitive pricing due to economic down-turn did not materialize.
6. One bidder dropped out of running and left only 4 bidders.

BUSINESS ARISING CONT.

2. **Security:** No report available.
3. **Building Maintenance:**
 - (a) **Painting Maintenance Quotes:** Quotes were received from two contractors to complete identified wall repairs and paint touch ups in the common area hallways and lobby areas.
 - Remdal Painting: \$4,670 plus GST
 - Alumni Painting: \$4,500 plus GST

The cost has been included in the operating budget for the fiscal year 2010 to be approved at the AGM.
 - (b) **Plumbing Assessment/Water Shut Down:** Milani Plumbing will be on site to conduct a plumbing test on Thursday, October 29, 2009. The water in the building will be shut down from 9:00 am to 5:00 pm. Access is required into all units on the 3rd, 4th, 11th and 19th floors. The plumbing tests are part of the plumbing assessment being completed by McCuaig & Associates Engineers. McCuaig & Associates will provide the council with the plumbing assessment to be reviewed at the AGM on November 25, 2009.
4. **Landscaping:** Council member Ingrid Northwood will contact Premier Landscaping to obtain a quote for landscaping maintenance for the new fiscal year along with recommendations for landscaping upgrades to be included in the new fiscal year's budget to be approved at the AGM.
5. **Insurance Protocol:** The agent is awaiting a response from the strata corporation's insurance provider (BFL Canada) regarding the list the strata council created to follow specific protocols and procedures required in order to lower the \$100,000 insurance deductible.

IMPORTANT INSURANCE REMINDER

As an owner of The Park, you are alerted to the fact that the strata corporation LMS-3432 has an insurance deductible for water claims of \$100,000. means that you are NOT insured for the first \$100,000 of ANY water loss claim. You should discuss this matter with your personal content insurance provider and provide your own coverage in order to protect yourself should an incident involving water damage claim occur.

6. Rules/Bylaw Review: Council member Liz Faulkner has completed a review of the strata corporation's rules and will present an updated list of rules to the council for review and approval.

CORRESPONDENCE

Owners are invited to write council via the management company regarding any strata matters.

1. A letter was received from an owner regarding the additional funding required to complete the Exterior Maintenance Project. The owner has recommended any additional funds on the townhouse budget be paid by the townhouse owners only and any additional funds required for the tower maintenance budget should be paid by the owners in the tower. Council has obtained a legal opinion on the owner's recommendation. "Please see the attached legal opinion for the Exterior Maintenance Project."
2. A letter was received from Cunningham Lindsay Insurance requesting Vancouver Condominium Services collect the repair costs from the insurance company of unit #701 for the toilet failure which created damages into 3 units including unit #601. The repairs of unit #601 have been completed and paid for by the insurance company but has requested VCS submit the repair invoices to the insurers of unit #701 for repayment. The agent was directed to submit a letter to Cunningham Lindsay Insurance to advise that this is not the responsibility of the strata corporation.

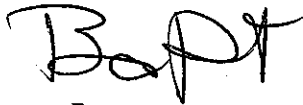
NEW BUSINESS

1. Annual Fire Inspection: The annual fire inspection will be scheduled for December. Notices will be posted.
2. Emergency Generator Testing: Simpson Maxwell has completed the annual emergency generator testing.
3. Strata Council Resignation: Due to an increased schedule of work, Gaye Alcott Fleet has tendered her resignation. The council would like to thank Gaye for her valuable assistance with the administration of The Park for the last two years.

SEEKING COUNCIL MEMBERS AT AGM

If you would like to volunteer your time and energy to protecting and maintaining your asset, (your home) please join council at the Annual General Meeting scheduled for Wednesday, November 25th. With the upcoming Exterior Maintenance Project (Townhouse repairs and Tower maintenance) it is extremely important that the council on hand obtain further assistance. Volunteers are requested to submit their name and unit number to Vancouver Condominium Services or the strata mail box or bring forward your name at the AGM on November 25th.

There being no further business, the meeting was adjourned at 8:20 p.m. The next meeting will be the Annual General Meeting to be held on Wednesday, November 25, 2009 at 7:00 p.m. in the Amenities Room, 1723 Alberni Street, Vancouver, BC



Bunny Porteous
Vancouver Condominium Services Ltd.
#400 - 1281 West Georgia Street
Vancouver, B.C. V6E 3J7

Telephone: (604) 684-6291 (24 Hour Emergency Services)
Toll Free: 1-877-684-6291 / Fax: 604-684-1539

BP/md

DOES YOUR ADDRESS MATCH YOUR DRIVER LICENSE?

There are areas of Vancouver and possibly Richmond where there may be security check points and the full scope of the street shutdown is still subject to change. The bottom line is that the potential impact is still unknown. To ensure you can easily obtain access to your building it has been recommended that your driver's license or other personal identification be up to date so that the noted address matches with your building. Hopefully, this will assist you in getting home that much easier.

You will find additional information at this website <http://olympichostcity.vancouver.ca>, but we are currently being advised that the following streets in Vancouver will be closed for security purposes:

- Expo and Pacific Boulevard (between Smithe and Quebec Streets)
- Georgia and Dunsmuir Viaducts
- Quebec Street (between Terminal Street and Second Avenue)
- Canada Place and Waterfront Road
- Midlothian Avenue (between Dinmont Avenue and Ontario St.)
- Renfrew Street (between Hastings Street and McGill Street)

JAMIE A. BLEAY
Barrister & solicitor

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File No. 20003248

October 21, 2009

The Owners, Strata Plan LMS 3432
c/o Vancouver Condominium Services Ltd.
400 – 1281 West Georgia Street
Vancouver, B.C.
V6E 3J7

Attention: Bunny Porteous

Dear Bunny:

Re: The Owners, Strata Plan LMS3432 (the "Strata Corporation") and cost allocation for regarding exterior maintenance project

As requested please find enclosed my legal opinion regarding the above-noted issue. For the purpose of this opinion I have relied on the following facts provided by you:

1. Strata Plan LMS 3432, also known as The Park, is comprised of residential townhouse strata lots (the "Townhouses") and residential partment strata lots located in a separate tower building (the "Tower");
2. Levelton Engineers ("Levelton") was retained by the Strata Corporation to conduct an investigation of the building envelope exteriors of the Townhouses and the Tower and has provided advice to the Strata Corporation that funds in excess of \$2,000,000.00 will be required to repair building envelope deficiencies to the Townhouses and the Tower.

For the purpose of this opinion we have reviewed the following documentation provided by you:

1. The bylaws of the Strata Corporation; and
2. A letter written to the strata council by an owner of a unit in the Tower objecting to having to pay for any of the costs to repair the Townhouses.

For the purpose of this opinion we have assumed that the bylaws you provided me with are identical to the bylaws filed in the land title office. If this assumption is incorrect please advise the writer your earliest opportunity.

Our Opinion:

Subject to section 100 of the *Strata Property Act* (the "Act"), monthly assessments or monthly contributions toward the annual operating expenses of a strata corporation, whether for the operating fund or the contingency reserve fund, are typically calculated based on the formula set out in section 99(2) of the *Strata Property Act* (the "Act") which states:

$$\frac{\text{unit entitlement of strata lot}}{\text{total unit entitlement of all strata lots}} \times \text{contribution to operating fund}$$

Section 100 of the Act states that a strata corporation may, at an annual or special general meeting held after the first annual general meeting, agree to use one or more different formulas other than the formula set out in section 99 of the Act, if the resolution is passed by a unanimous resolution.

Likewise, a strata lot's share of a special levy is calculated in accordance with the formula set out in section 99(2) of the Act unless another formula is used that establishes a fair division of expenses for that particular levy, in which case the resolution must be approved by a unanimous resolution OR a strata corporation has created residential sections in accordance with section 191 of the Act. Section 11.1 of the Regulations states:

11.1 For the purposes of section 191 (1) (c) of the Act, the following are the different types of residential strata lots:

- (a) apartment-style strata lots;
- (b) townhouse-style strata lots;
- (c) detached houses.

The formulas set out in section 11 of the Regulations for the calculation of contributions toward operating expenses, contingency reserve fund expenses AND special levies are as follows:

Formulas for sharing operating expenses
for limited common property and
types of strata lots in sections

11.2 (1) For the purposes of section 195 of the Act, but subject to a resolution under section 100 of the Act, if a contribution to the operating fund relates to and benefits only limited common property for the exclusive use of strata lots in a section, the contribution is shared only by owners of the strata lots entitled to use the limited common property, and

each strata lot's share of that contribution is to be calculated in accordance with the following formula and not in accordance with the formula set out in section 195 of the Act:

$$\frac{\text{unit entitlement of strata lot in section}}{\text{total unit entitlement of all strata lots in section whose owners are entitled to use the limited common property to which the contribution relates}} \times \text{contribution to operating fund}$$

(2) For the purposes of section 195 of the Act, but subject to a resolution under section 100 of the Act, if a contribution to the operating fund relates to and benefits only one type of strata lot in a section, and that type is identified as a type of strata lot in the bylaws of the section, the contribution is shared only by owners of strata lots of that type, and each strata lot's share of that contribution is to be calculated in accordance with the following formula and not in accordance with the formula set out in section 195 of the Act:

$$\frac{\text{unit entitlement of strata lot in section}}{\text{total unit entitlement of all strata lots in section of the type to which the contribution relates}} \times \text{contribution to operating fund}$$

(3) Subject to a resolution under section 100 or 108 (2) (b) of the Act, if a strata lot's share of a contribution to the operating fund is calculated in accordance with subsection (1) or (2), each strata lot's share of the total contribution to the contingency reserve fund or a special levy is to be calculated using the following formula:

$$\frac{\text{unit entitlement of strata lot in section}}{\text{total unit entitlement of all strata lots in section}} \times \frac{\text{total contribution to contingency reserve fund or special levy}}{\text{total contribution to contingency reserve fund or special levy}}$$

We have reviewed the Strata Corporation's bylaws and although The Park is comprised of the Tower and the Townhouse residential strata lots, the Strata Corporation has not created separate sections for the Tower and for the Townhouse residential strata lots. As such, it is our view that for the purpose of calculating each owner's share of any special levy imposed pursuant to section 108 of the Act to raise funds for exterior building envelope repairs at The Park must be calculated in accordance with the formula set out in section 99(2) of the Act. As such, the adage "all for one and one for all" applies and each owner will pay his or her proportionate share of the total amount of the special levy regardless of whether they live in the Tower or the Townhouses.

As an aside, the Strata Corporation has an obligation under the Act to repair and maintain the common property which includes, in our view, the exterior and structure of the Tower and the Townhouses. The funds to pay for the repairs and maintenance either come from the operating

fund (or in some instances the contingency reserve fund) or by way of a special levy. In the event that a ¾ vote resolution to approve a special levy to pay for building envelope repairs is defeated, the Strata Corporation will not have sufficient funds to "maintain and repair" the common property and as such, would be in breach of its repair and maintenance obligation. Any owners and in particular, those owners suffering from water ingress as a result of building envelope failure/deterioration, would be at liberty to retain legal counsel, commence legal proceedings against the Strata Corporation and apply for a court order compelling the Strata Corporation to fix the Tower and the Townhouses and further, for a court order imposing a special levy on all owners. This type of application is commonly referred to as a "Tadeson" application is has been granted on several occasions over the past number of years in situations where strata corporations have been unsuccessful in raising funds to pay for building envelope repairs. You should also be aware of the possibility of an application being made to appoint an administrator to exercise the powers and perform the duties of the Strata Corporation. We will not go into detail regarding the specifics of this appointment but you should be aware that if an administrator is appointed, the administrator would be given the power and authority to step into the shoes of the Strata Corporation in order to move the building envelope repairs along and would have the authority to apply to court for an order compelling owners to pay for the repairs by way of a special levy if the owners did not voluntarily agree to do so. The cost of an administrator can, in the writer's experience, add several thousand dollars per month to the Strata Corporation's monthly operating expenses.

If you have any other questions regarding this matter please contact the writer.

Yours truly,

ACCESS LAW GROUP

PER:

JAMIE A. BLEAY

JAB/c