

WILSON LAYCRAFT

• BARRISTERS & SOLICITORS •

Our File number 10361 RSG

January 28, 2009

The purpose of the by-law revisions is to bring our current by-laws to a state that better reflect the realities of the resort and to bring them current with changes made to the Condominium Property Act in 2000. The existing by-laws were implemented by the original developer and were primarily intended to serve his purposes. Now that the resort has parted ways from the developer (he has sold all of his lots) and has some experience in addressing issues that have arisen over the years, we can look to the existing rules and try to amend with a view to better management of the affairs of the unit owners. What we want to result from this process is a set of rules that is fair and can be consistently and evenly applied to all unit owners. The status quo does not allow us to accomplish this.

1. By-Law 16.5 - Variances

The Board is obligated to apply the by-laws to all unit owners. It has arisen on many occasions that someone's particular situation does reasonably warrant a relaxation from the enforcement of the existing by-law. Building issues are the most obvious example. The actions of past boards was to ignore the specific by-law infraction. However, when enforcement of a by-law is relaxed, some unit owners interpret this to mean that the ordinary rules no longer apply and they are free to conduct their affairs in any manner they see fit. Many times, the result of such actions are innocuous and do not affect or concern anyone. It does happen that a unit owner will push the boundary to an unreasonable limit and argue that the by-law is not enforced and does not bind them and their actions.

For this reason, we want to bring compliance of by-laws back where they are evenly and uniformly applied to all unit owners. The only exceptions would be those who have special and unique circumstances that justify a waiver of the usual rules. We do not expect to grant many variances but do see this approach as a reasonable way in which to confirm that all unit owners must follow the same rules and not casually disregard them as they see fit.

Some owners have said that the variance would grant additional power to the Board. For this reason, we inserted a high threshold voting requirement (67%). We have also inserted provisions that allow for the creation of a "variance committee" whose use we see as essential where there is potential for a conflict of interest. If a current Board member is affected by a proposed grant of a variance, then the Board would look to refer this matter to a separate committee. The committee would be comprised of a majority of non-Board members. For example, if there are 5 members of the committee, then a minimum of 3 committee members would be non-Board members.

We have also inserted what is called a privative clause that seeks to restrict an appeal to a court of law. We see this as a reasonable approach to ensure that those most familiar with the basic issues concerning a variance request are able to adjudicate and to prevent threats of litigation that may be used to secure the variance instead of awarding the variance strictly on its own merit. We can ensure that where an application is contentious that the separate variance committee described above can provide a second and unbiased review of the merits of the application and we feel that should be sufficient to properly dispose of the matter.

2. By-Law 34.1(a) - Maximum Fines

The quantum of the maximum fine has been the discussion at many AGM's. It does not happen often but does occur where a unit owner or their guest does something that is severe and must be dealt with harshly. For example, we have had instances of significant vandalism of common property, landing an airplane on common property or intentional building violations. The unit owner's response is typically indifferent as a \$200 fine is not viewed by anyone as any kind of deterrent or punishment.

The Board feels that the vast number of unit owners are responsible and reasonable and have a vested interest in being good neighbours and following the by-laws. However, there always seems to be one in every crowd who is insistent on doing things that are offensive, dangerous and who completely disregard the interests of their neighbours and fellow unit owners. It does not happen often but it does happen.

The categories that we are suggesting will delineate the by-law infractions that are not terribly consequential such as pet defecation on common property, excessive late night noise or litter as minor items and keeping the maximum fine to \$100 (We would expect). Those that are very serious such as substantial damage to common property (water treatment plant, etc) or intentional building violations (encroachment on setbacks) and those would be subject to a maximum amount.

To help ensure that we are fair with concerning the amount of the fine, we have proposed an appeal option where the majority on the appeal committee would be non-Board members who were involved in the levy of the fine at first instance.

Please be reminded that as Board members, we are also unit owners and have to live within the same rules. Many of us will serve one or two terms as members and then be subject to the enforcement practices of succeeding Boards.

3. By-Law 47 Boat Shed

The Boat Sheds were an initiative of the developer and sold to individual unit owners. Unfortunately there is not enough room to accommodate boat sheds for everyone nor does everyone have a need for or want a boat shed. The current Condominium Corporation practice is that there should be no costs borne by the Condominium

Corporation, relating to the Boat Sheds other than some minor administration costs. All hard costs, costs of insurance and property taxes are charged back to the boat shed owners.

It is the intention of this by-law, to formalise the existing practice of passing through these costs and to ensure that those who do not own a boat shed for any reason, are not inconvenienced in any fashion whatsoever insofar as any costs are incurred or any portion of the main reserve fund is used for these structures. 4 sets of boat sheds were recently sold by the Developer to unit owners and we are hopeful that more can be made available. For now, we think it is not fair that for those who do not own boat sheds be required to pay for or bear any of its burdens.

4. By-Law 37.2 ATV's

This by-law is the most contentious that we have proposed. The current by-law prohibits all ATV used anywhere on the resort for any reason and it is not currently enforced. The issue concerns their legality of use on provincial highways, damage to resort owned off-road areas and liability to the Condominium Corporation for injuries occurring on resort owned off-road areas.

When used on roads in a reasonable manner, The Board feels that ATV's pose no greater risk than any other vehicle. The concern is when they are taken off-road. It happens with frequency that injuries do result. There is an Alberta statute called the "Occupiers' Liability Act" whose effect is to make liable land owners for the injuries sustained by visitors on their land in certain circumstances. In other words, our Condominium Corporation may be liable for injuries sustained by the use of ATV's off road on its common property. For this reason, we wish to take steps to mitigate this risk. The Occupiers' Liability Act does allow property owners to take steps to accomplish this. There are many reported court cases that address ATV related injuries and the liability of the land owner. This risk is real and should be addressed for the benefit of all unit owners.

Finally, Owners have asked that a legal review be done for any proposed by-laws. The Board would like to ensure all owners that advice has been sought in the past on many issues and the Board currently has a practising lawyer with a great deal of experience dealing with issues concerning condominium corporations. Further, our property manager, Warren Lyckman is very experienced in the management of condominium corporations.

The Board hopes that the foregoing discussion does address your concerns. We would hope that you will consider the foregoing discussion before casting your vote on these proposed by-law changes.

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