

Owners and Aesthetics

By John A.A. Deacon, BA, LLB

HOW DOES a condo board handle a refurbishment project that necessarily involves an aesthetic change?

Examples include:

- Replacing/updating corridor carpets, wallpaper, lighting sconces, door surrounds in a highrise condo
 - Replacing/updating garage doors, entry doors in a townhouse condominium
 - Lobby refurbishment
 - Amenities areas – refurbish, re-equip, alter uses



Every unit owner will have a strong opinion both on when the refurbishment should happen, and on each individual component including design, colour, materials and the proposed uses if applicable. Owners will often comment “this is my home, the board of directors should not be the final arbiter of good taste. It is unfair to deny owner input...”

Similarly, most condominium boards of directors have no interest in being seen to impose their personal taste in aesthetics on disagreeing owners. What form should that owner input take?

Unless carefully managed, the board can find itself in a lose-lose situation. If the design, colour and materials are matched as closely as possible to the materials being replaced, so that no alteration or improvements are made, the board will be criticized for allowing the building to fall behind other more current buildings,

thereby being less attractive, having less curb appeal, and negatively influencing unit values. On the other hand, the board of directors recommending improvements for the foregoing reasons, may be told they cannot do so without owner approval as set out in section 97 of the *Condominium Act* governing notice or owner approval of additions, alterations and improvements to common elements.

■ Committees

Some boards of directors will attempt to provide a forum for owner input by appointing a committee of owners. Typically the committee members are the most vocal and opinionated owners, and if the board of directors does not manage the committee process carefully, directors may face not only disagreeing owners but a disagreeing committee which can actually impair the decision making process by fragmenting the community.

An owner consultation committee can work if clear guidelines are set. Certainly a director should be on the committee to clearly outline the budget constraints, the timing of reporting and limiting the extent or breadth of the investigation of the committee. In this regard, the board may, for example, require that a professional designer be consulted and that the committee is to approve and present two good alternatives for the refurbishment project. It is strongly recommended against three or more options as this virtually guarantees that no option will receive majority approval and result in the board

CON TERRA
RESTORATION LTD.

Parking Structure & Building Repair Specialists

Tel: (905) 848-2992 • Fax: (905) 848-3883

www.conterra.ca



- Parking Structure Rehabilitation
- Balcony, Masonry and Caulking Repairs
- Traffic Deck Waterproofing Systems
- Expansion Joints
- Hydrodemolition
- Specialized Concrete Repairs

3633 ERINDALE STATION ROAD, MISSISSAUGA, ONTARIO L5C 2S9

having to choose an option to which a majority of owners are opposed.

While a number of condominiums appoint committees for the valid democratic purpose of encouraging owner involvement, institutionalizing owner feedback and avoiding any perception of autocratic or dictatorial rule, the committee process in itself contains the seeds of dissent and disunity. If clear guidelines are absent, a committee will often go in a direction the board of directors is unwilling to accept. On the other hand, where guidelines are too restrictive, committee members may resign complaining that the board tied their hands or prejudged the outcome. Certainly committees must be given a limited life, a clear reporting requirement, a transparency and owner consultation mandate as well as direction on internal governance issues such as meetings, notice, quorum, minutes and appointment of a committee chair.

■ Issues and Considerations Arising from Direct Owner Involvement

Even a condominium board of directors acting with the best of intent, can run into a storm of protest over the recommendations of a professional designer or committee. I have seen not only boards removed from office, but also contracts cancelled, designers dismissed, all options given to owners rejected, and other community wrenching responses and results. The following recommendations can assist a board of directors in properly establishing a procedure for consideration, presentation, approval and implementation of refurbishment projects designed to

minimize the possibility of community disruption.

1. A refurbishment project is often necessary as a result of the expiry of the useful life of an existing property component. Sometimes this occurs as a result of the component actually wearing out, and other times when replacement or repair becomes less cost effective than the option of replacing. Some condominium corporations will go forward with refurbishment projects because the original design is “dated” or out of fashion. This is a risky proposition as other owners may well step forward to say it was this design that attracted them to the building in the first place and they should not be forced to pay for a design change under the guise of replacing a building component at the end of its life expectancy. The board of directors of a condominium should accordingly fully inform owners of the plan well in advance, the reasons for it, the cost impact, the alternatives considered by the board and the reasons why these alternatives were rejected.

■ Meetings

Meeting early with owners should give a condominium board a sense of from where dissent might come and its focus. This may be headed off by reassuring owners that owner input will be welcomed and the process will be consultative and transparent.

All such commitments made to the owners must be fulfilled!

It is at this stage that the board of directors can also set out a proposed timetable of steps including retaining of a designer, the presentation of the designs and method of owner feedback, the procedure to accept and implement a proposal. It is important to confirm that for any aspect of the proposal which the board is advised legally constitutes an alteration within the meaning of the *Condominium Act*, the appropriate notice or consent requirements will be complied with.

■ Funding issues

2. Major refurbishments are generally paid from the condominium corporation reserve fund. However, there may be components that constitute an alteration or improvement for which not only will owner notice or consent be required, but are not contemplated in the reserve fund study and should not therefore be funded from reserves. If such aspects of a refurbishment can reasonably be considered separate or optional aspects, then a funding plan, whether from surplus operating funds, special assessment, or borrowing can be discussed with owners in the consultation process. With respect to reserve fund disbursements for major repair or replacement, it will be important to provide a financial summary to owners as to the expected continuing adequacy of the reserved fund, the next anticipated reserve fund study update, and whether there will be an impact on the owners’ future monthly contribution.

■ Status Certificate

3. It is also of note that if it is in the reasonable contemplation of the board of directors that there will be an

NON-MEMBER



Canadian Parking Equipment
A division of CPE-APE Inc.

Turnkey Parking Solutions

Parking Gates
Ticket Dispensers
Swing & Slide Gates
Revenue & Access Control
Smart Card Meters & Pay Stations

Mem. of
Can. Parking
Association

Sales • Service • Maintenance
905-673-0093
Visit Us! www.cpeape.com

upward impact on common expense contributions, that this should be quantified as best as possible and disclosed in status certificates once a go-ahead decision is made, even if all final details have not yet been determined.

■ Board Decision

4. At all stages owners should be advised that the refurbishment project, with the exception of optional improvements which can reasonably be separated from the core refurbishment project, is a matter for final decision by the board of directors including aesthetic choices. The Ontario courts, including in the *Little v. Metropolitan Toronto Condominium Corporation No. 590* (August 2006) judgment, have clearly stated that the condominium board has a broad discretion in designing a necessary refurbishment project. Elements of improvement and alteration to the common elements will often be considered an integral part of the replacement of common element components whose useful life expectancy has expired. The board of directors also has authority to decide to replace a property component with an improved component without owner notice or approval. When any doubt exists, legal advice should be sought and relied upon.

It is the duty of the board of directors to implement refurbishment projects in a timely fashion as part of the condominium corporation's maintenance and repair responsibility. Owners need to be informed of this at the earliest possible stage as well as the foregoing processes of owner consultation and transparency of process.

With reasonable owner input and approval where needed, a condominium corporation can substantially enhance property appeal and unit values. If mishandled, owner anger and resentment can divide and injure the community, taking a long time and sometimes expensive proceedings to heal. The potential negative impact on property reputation and unit values cannot be overestimated.

While unit owners must take responsibility for their own conduct, boards of directors are elected with the responsibility to lead in the context of a democratic condominium community and must be seen to be taking clear steps with full respect for owner opinion, and for the community as a whole.

■ Shared Facilities – Reciprocal Agreements

This is a topic for an entire article on its own, but merits brief reference here.

Establishing a process for refurbishment of areas that comprise shared amenities of more than one condominium corporation adds complexity to the approval process.

- There may be jurisdictional issues between boards of condominium corporations and committees established by agreements to administer shared facilities.

- In a two-phased condominium project, deadlock can result at the committee level and perhaps only be resolved by joint board meetings or a form of mediation, and in default of agreement, arbitration.

- Unit owner input may vary between the two condominium properties. It is accordingly even more important in such a situation for the body responsible for implementing the refurbishment to establish a process acceptable not only to unit owners but to the two or more condominium boards of directors of the condominium corporations that will be paying the tab.

- Reciprocal agreements will often contain special approval processes for "capital" improvements that differ from the s. 97 processes outlined in the *Condominium Act*.

- Any dispute on design, cost, approval etc. can easily lead to the emergence of other grievances simmering below the surface, such as proportional contribution not fairly reflecting actual use and enjoyment of the amenity.

Maybe there is something to be said for benevolent dictatorship! ■

John A.A. Deacon, BA, LLB is a senior partner in the law firm Deacon, Spears, Fedson & Montizambert.

The Future Looks Brighter When You're with an RCM™

Registered Condominium Managers are:

TRUSTED They uphold the strict guidelines of the ACMO Code of Professional Ethics and are answerable to their peers through a formal review process.

KNOWLEDGABLE Specialized courses offered in the classroom, online or through their companies prepare them well for the rigorous RCM exam and ongoing professional development keeps them up to date.

EXPERIENCED They have a minimum of two years' experience as condominium property managers before they can receive their RCM designation.

IN DEMAND More and more condominium boards are trusting RCMs to help them guide their communities through the important complexities of condominium management.

INSIST ON AN RCM WHEN YOU HIRE A MANAGER.

The Association of Condominium Managers of Ontario

t. (905) 826-6890

toll free: (800) 265-3263

e-mail: rcm@acmo.org

web: www.acmo.org

