

Condo Smarts April 24, 2019

What is a significant alteration?

Dear Tony: Our condo is in White Rock and our strata council are preparing for a roof replacement of our main building. We have one pent house unit adjacent to the roof areas and they are requesting permission to pay an additional cost to double the size of their roof top patio area that was originally installed by the developer. Before our strata council considers this request, we are concerned we may be granting permission for an exclusive use of common area and change to the roof that may be significant. As a result, would you recommend the matter be taken to the owners at a general meeting for a $\frac{3}{4}$ vote, or would it be better for council to retain a lawyer and negotiate an agreement with the pent house owner over use of the property and associated future costs? Myrna C.

Dear Myrna: A very helpful test to determine a significant change, was summarized in a BC Supreme Court Decision VR 677 where the court set a series of questions. The test raises a number of factors which establishes a frame work to determine if an alteration to common property or a common asset is significant change and whether a $\frac{3}{4}$ vote of the owners at a general meeting is required. The judge raised the following 6 points. Determine: 1) If a change would be more significant based on its visibility or non-visibility to residents and its visibility or non-visibility towards the general public; 2) Whether the change to the common property affects the use or enjoyment of a unit or a number of units or an existing benefit of a unit or units; 3) Is there a direct interference or disruption as a result of the changed use? 4) Does the change impact on the marketability or value of the unit? 5) If the number of units in the building may be significant along with the general use, such as whether it is commercial, residential or mixed use, and 6) The judge also concluded that consideration should be given as to how the strata corporation has governed itself in the past and what it has allowed. For example, has it permitted similar changes in the past? Has it operated on a consensus basis or has it followed the rules regarding meetings, minutes and notices as provided in the [Strata Property Act](#). While strata councils may at times have to determine whether a change is significant it is ultimately their responsibility to either, grant permission, decline the requested alteration or convene a general meeting for a $\frac{3}{4}$ vote. The proposed alteration does trip some of the test which indicates a meeting for a $\frac{3}{4}$ vote may be the best solution. In addition, address the allocation of exclusive use of common property which the corporation may only grant on a yearly basis, or consider a $\frac{3}{4}$ vote to have the increased area designated as limited common property. Consider the impact this expansion will now have on other units as it will be directly over the master bedroom of the unit below. As a condition of approving the alteration, and if the owners agree by $\frac{3}{4}$ vote, consult your lawyer on all the conditions that may be imposed and any future use considerations, such as solar collectors. The strata council may require the owner to pay all related costs which would include permits, engineering, installation, all future maintenance and repair costs, legal costs for the agreement and the condition that on sale of the strata lot they will disclose the agreement to a subsequent buyer as a condition of the sale.

Tony Gioventu, Executive Director CHOA

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