IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sherwood v. The Owners, Strata Plan VIS 1549,*
2018 BCSC 890

Date: 20180531
Docket: S147102
Registry: Vancouver

Between:

Douglas Sherwood and Rosslyn Sherwood

Plaintiffs

And

**The Owners, Strata Plan VIS 1549
and Cinnabar Brown Holdings Ltd.**

Defendants

And

The Owners, Strata Plan VIS 1549

Third Party

Before: The Honourable Madam Justice Gray

Reasons for Judgment

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Representative for the Defendant, Cinnabar Brown Holdings Ltd.:	L. Sharp C. Sharp
Place and Dates of Trial:	Vancouver, B.C. June 5-9, 12-16, 19-22, 2017 and July 10-13, 2017
Place and Date of Judgment:	Vancouver, B.C. May 31, 2018

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I. INTRODUCTION

[1] The plaintiffs, who I will refer to together as the “Sherwoods”, are a married couple who own strata lot 13 (“Sherwood SL”) in the Beach Acres Resort (“Beach Acres”) in Parksville, B.C. Beach Acres is a condominium property containing a variety of building configurations. The defendant and third party, “The Owners, Strata Plan VIS 1549”, is the strata corporation (“BA Strata Corporation”) consisting of all the owners of strata lots in Beach Acres.

[2] The Sherwood SL is a beachfront unit in a duplex, and has a common wall with strata lot 14 (“Sharp SL”). I will refer to the duplex consisting of the Sherwood SL and the Sharp SL as the “Duplex”. The defendant, Cinnabar Brown Holdings Ltd. (“Cinnabar”), owns the Sharp SL. The owners of Cinnabar are a married couple, and I will refer to them and to the named defendant Cinnabar as the “Sharps”. For the purposes of these reasons for judgment, it is usually not important to distinguish between the Sharps and Cinnabar. Both the Sherwoods and the Sharps are unit owners in the BA Strata Corporation.

[3] The *Strata Property Act*, S.B.C. 1998, c. 43 [*SPA*] applies to the BA Strata Corporation. The Beach Acres strata council (“BASC”) consists of members elected at annual general meetings (“AGMs”). The BASC functions in many ways like the directors of a society or business corporation.

[4] This litigation arose out of what at first seemed like a simple desire on the part of both the Sharps and the Sherwoods to add about 34 square feet of living space to their respective units by enclosing patio space which was limited common property (“LCP”). The Sharps commenced renovation work, but the work is incomplete. There is a dispute over what further work should and must be done on the Sharp SL and who should do it.

[5] It is highly contentious whether the work which has been done on the Sharp SL complies with the required approvals. The work has given rise to issues about the appearance of the roof and the structural integrity of the Duplex, and led to stop work orders from the City of Parksville (“City”) and numerous meetings of the BASC

and of the whole BA Strata Corporation. The requirements of the *SPA* and of the City, which includes the requirement to comply with the Building Code and the Building Permit (“BP”), added complexity to the proposed renovations.

[6] Presently, although work on the Sharp SL is incomplete, it includes a roof which has one slope (“As-Built Sharp Roof”), and which covers the roof which existed prior to 2013 (“Original Roof”) which also had one slope. Appendix A is a copy of a photograph of the Original Roof, and Appendix B is a copy of a photograph of the As-Built Sharp Roof. The existing roof over the Sherwood SL is the Original Roof, which is more steep than the As-Built Sharp Roof. I refer to that general roof design as a “One-Slope Roof Design”, in contrast to a “Two-Slope Roof Design”, consisting of the existing steeply pitched roof flowing into a less steep portion of roof which is like a lip. A copy of a model showing a Two-Slope Roof Design is Appendix C. A major focus of the evidence was whether the required approvals were given for a One-Slope Roof Design, in contrast to a Two-Slope Roof Design.

[7] The Sherwoods seek an order that the BA Strata Corporation, at its expense, remove the As-Built Sharp Roof, or alternatively, that the Sharps be ordered to do so. The position of the Sherwoods is that the BA Strata Corporation treated them significantly unfairly in how it handled the issues with the work on the Sharp SL, especially regarding the roof and structural issues. The Sherwoods claim entitlement to remedies under s. 164 of the *SPA.* The Sherwoods also claim that the Sharps performed the work negligently, and seek damages from them.

[8] Like the Sherwoods, the Sharps also allege that the BA Strata Corporation treated them significantly unfairly and seek a remedy under s. 164 of the *SPA.* The Sharps claim that they were treated unfairly for two main reasons. First, they say they were treated differently and worse than they say two other owners were treated, being the Sherwoods in connection with a shed, and the Starks in connection with a skylight. The Sharps claim that they were also treated unfairly when the BA Strata Corporation did not hold a meeting which they say they requested. The Sharps deny that they are responsible to the Sherwoods for negligence.

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[9] The position of the BA Strata Corporation is that it acted appropriately in the circumstances, and that the appropriate order is to require the Sharps to remove the As-Built Sharp Roof, and if that is not done in an appropriate time, only then should the BA Strata Corporation be required to remove it.

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[10] This dispute led to a trial which occupied 18 hearing days. The Sherwoods and the BA Strata Corporation were represented by legal counsel. Ms. Sharp represented Cinnabar, essentially representing herself and her husband. While English is not her first language, Ms. Sharp is highly educated and articulate, and her submissions were clear.

II. ISSUES AND SUMMARY OF CONCLUSIONS

[11] The cross-claims raise the following issues:

1. What did the BA Strata Corporation approve at the AGM 2012?
2. What, if anything, did the BASC approve?
3. Was the As-Built Sharp Roof built in accordance with the approvals by the BASC and the BA Strata Corporation?
4. If the As-Built Sharp Roof was not built in accordance with the approvals by the BA Strata Corporation and the BASC, what is the appropriate remedy?
5. Did the BA Strata Corporation treat the Sherwoods significantly unfairly, permitting a remedy under s. 164 of the *SPA*?
6. Did the BA Strata Corporation treat the Sharps significantly unfairly, permitting a remedy under s. 164 of the *SPA*?
7. If the BA Strata Corporation treated either the Sherwoods or the Sharps significantly unfairly, what is the appropriate remedy?
8. Are the Sharps liable to the Sherwoods for negligently altering the Sharp SL?

9. If the Sharps acted negligently in altering the Sharp SL, what is the appropriate remedy?

10. What order should be made concerning costs?

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[12] For the reasons discussed below, I conclude as follows:

1. At the AGM 2012, the owners approved the renovation proposal subject to an executed Alterations & Indemnity Agreement (“A&I Agreement”) which required compliance with the BP.

2. The BASC approved the February 2013 Plans on the terms set out in the Sharp A&I Agreement.

3. No, the As-Built Sharp Roof was not built in accordance with approvals by the BASC and the BA Strata Corporation.

4. The appropriate remedy is to require Cinnabar to remove the As-Built Sharp Roof and replace it with a roof similar to the Original Roof, and if it fails to do so within an appropriate time, to require the BA Strata Corporation to do the necessary work.

5. No, the BA Strata Corporation did not treat the Sherwoods significantly unfairly.

6. No, the BA Strata Corporation did not treat the Sharps significantly unfairly.

7. It is not necessary to consider this question.

8. No, the Sharps are not liable to the Sherwoods for negligence.

9. It is not necessary to consider this question.

10. The costs order includes a Bullock order, as discussed below.

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III. RELEVANT LEGISLATION AND BA STRATA CORPORATION BYLAWS

[13] At the relevant times, the relevant sections of the *SPA* and the BA Strata Corporation's Bylaws were as set out in this section.

[14] The affairs of a strata corporation are governed by the *SPA*, Regulations under the *SPA*, and the relevant strata corporation's bylaws. The *SPA* provides that the owners (in this case, the BA Strata Corporation) will elect a strata council (in this case, the BASC).

[15] The role of a strata corporation and of its strata council are set out in ss. 2 through 4 and 26 of the *SPA*, which are as follows:

> **Establishment of strata corporation**
>
> **2** (1) From the time the strata plan is deposited in a land title office,
>
> (a) a strata corporation is established, and
>
> (b) the owners of the strata lots in the strata plan are members of the strata corporation under the name "The Owners, Strata Plan [the registration number of the strata plan]".
>
> (2) Subject to any limitation under this Act, a strata corporation has the power and capacity of a natural person of full capacity.
>
> **Responsibilities of strata corporation**
>
> **3** Except as otherwise provided in this Act, the strata corporation is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the owners.
>
> **Strata corporation functions through council**
>
> **4** The powers and duties of the strata corporation must be exercised and performed by a council, unless this Act, the regulations or the bylaws provide otherwise.
>
> …
>
> **Council exercises powers and performs duties of strata corporation**
>
> **26** Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.

[16] As a result, in the *SPA* and the bylaws of a strata corporation, a reference to the performance of a duty or responsibility by a "strata corporation" is a reference to performance by the relevant "strata council", unless the *SPA* or the bylaws say otherwise. The *British Columbia Strata Property Practice Manual* is not legally

binding, but provides helpful summaries of the applicable law. It summarizes the effect of s. 4 of the *SPA* as follows:

> Under s. 4, the powers and duties of a strata corporation must be exercised by the strata council except where the Act, the regulations, or the strata corporations' bylaws provide otherwise ….
>
> The basic model, then, is the corporate model, in which the directors by default exercise all powers of the organization. In the case of a strata corporation, however, the exceptions are many. Therefore, in the absence of a clear contrary intention, every reference in the Act, the regulations, and a strata corporation's bylaws to a "strata corporation" must be read as a reference to the strata council; and every express or implied reference to a section must be read as a reference to the section executive." …

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[17] The *SPA* requires the strata council of a strata corporation to be elected. It also permits the strata corporation to give directions to its strata council, but only if the directions are consistent with the *SPA*, the Regulations, and the bylaws. That is set out in ss. 25 to 27 of the *SPA*, which is as follows (with s. 26 restated here for convenience):

> **Election of council**
>
> **25** At each annual general meeting the eligible voters who are present in person or by proxy at the meeting must elect a council.
>
> **Council exercises powers and performs duties of strata corporation**
>
> **26** Subject to this Act, the regulations and the bylaws, the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws and rules.
>
> **Control of council**
>
> **27** (1) The strata corporation may direct or restrict the council in its exercise of powers and performance of duties by a resolution passed by a majority vote at an annual or special general meeting.
>
> (2) The strata corporation may not direct or restrict the council under subsection (1) if the direction or restriction
>
> > (a) is contrary to this Act, the regulations or the bylaws, …

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[18] Many of the terms used in the *SPA* are defined in s. 1(1). The terms which are important here are the definitions of “3/4 vote”, “common property”, “limited common property” (referred to as “LCP” in these reasons for judgment), and “residential strata lot”. Those definitions are in relevant part as follows:

> **"3/4 vote"** means a vote in favour of a resolution by at least 3/4 of the votes cast by eligible voters who are present in person or by proxy at the time the vote is taken and who have not abstained from voting;
>
> **"common property"** means
>
> > (a) that part of the land and buildings shown on a strata plan that is not part of a strata lot, …
>
> **"limited common property"** means common property designated for the exclusive use of the owners of one or more strata lots;
>
> **"residential strata lot"** means a strata lot designed or intended to be used primarily as a residence;

[19] The *SPA* provides a limit on changing the habitable part of a strata lot. That is set out in s. 70(4), which is as follows:

> **Changes to strata lot**
>
> **70** …
>
> (4) Subject to the regulations, if an owner wishes to increase or decrease the habitable part of the area of a residential strata lot, by making a nonhabitable part of the strata lot habitable or by making a habitable part of the strata lot nonhabitable, and the unit entitlement of the strata lot is calculated on the basis of habitable area in accordance with section 246 (3) (a) (i) or on the basis of square footage in accordance with section 1 of the *Condominium Act*, R.S.B.C. 1996, c. 64, the owner must
>
> > (a) seek an amendment to the Schedule of Unit Entitlement under section 261, and
> >
> > (b) obtain the unanimous vote referred to in section 261 before making the change.

[20] Regulation 5.1 of the *Strata Property Regulation*, B.C. Reg. 43/2000, (“Regulation 5.1”) permits certain increases in the habitable part of a strata lot if a) the strata lot in question is a “residential strata lot”, b) the increase is both less than 10% of the habitable part and less than 20 square meters (being a little over 215 square feet), and c) the “strata corporation” provides written approval. As provided in s. 4 of the *SPA*, “strata corporation” in that context means the applicable strata council.

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[21] The relevant portion of Regulation 5.1 is as follows:

> **Minor changes to strata lot size**
>
> 5.1 …
>
> (2) An owner who wishes to increase the habitable part of the area of a residential strata lot without amending the Schedule of Unit Entitlement need not comply with the requirements set out in section 70 (4) of the Act if
>
> > (a) the increase to the habitable part, combined with any previous increase to the habitable part, is less than 10% of the habitable part and less than 20 square metres, and
> >
> > (b) the owner obtains the prior written approval of the strata corporation.

[22] The *SPA* provides that ordinarily, a strata corporation must not make a "significant change in the use or appearance of common property" without a resolution passed by a ¾ vote at a general meeting. That is set out in s. 71, which is as follows:

> **Change in use of common property**
>
> **71** Subject to the regulations, the strata corporation must not make a significant change in the use or appearance of common property or land that is a common asset unless
>
> > (a) the change is approved by a resolution passed by a 3/4 vote at an annual or special general meeting, or
> >
> > (b) there are reasonable grounds to believe that immediate change is necessary to ensure safety or prevent significant loss or damage.
>
> [Underlining added.]

[23] The relevant bylaws of the BA Strata Corporation were in effect from January 2003 until November 16, 2013, and I refer to them as the "BA 2003 Bylaws" and to individual bylaws as "BA 2003 Bylaw [number]". There were some minor amendments made in December 2008 which are not material to this case.

[24] BA 2003 Bylaws 4 and 5 require an owner to obtain written approval from the BA Strata Corporation for certain alterations. Those Bylaws are as follows:

> **4. Obtain Approval before Altering a Strata Lot**
>
> (1) An owner must obtain the written approval of the Strata Corporation before making an alteration to a Strata lot that involves any of the following:

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> (a) the structure of a building
>
> (b) the exterior of a building
>
> (c) chimneys, stairs, balconies or other things attached to the exterior of a building
>
> (d) doors, windows or skylights on the exterior of a building, or that front on the common property …
>
> (2) The Strata Corporation must not unreasonably withhold its approval under Subsection (1), but may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses relating to the alteration including, but not limited to, all future repair, maintenance or replacement costs.
>
> **5. Obtain Approval Before Altering Common Property**
>
> (1) An owner must obtain the written approval of the Strata Corporation before making an alteration to common property including limited common property or common assets
>
> (2) The Strata Corporation may require as a condition of its approval that the owner agree, in writing, to take responsibility for any expenses related to the alteration including, but not limited to, all future repair, maintenance and replacements costs, insurance costs and legal costs of the Strata Corporation, as between a solicitor and his own client.
>
> …
>
> [Underlining added.]

[25] BA 2003 Bylaws 4 and 5 are the same as the *SPA* standard bylaws, except for the underlined words.

[26] The standard bylaws are described in the *British Columbia Strata Property Practice Manual* as follows:

> **B. ALTERATIONS BY OWNERS [SS. 25A]**
>
> Under the Standard Bylaws, a strata lot owner must obtain the written approval of the strata corporation before making an alteration to common property, including limited common property, or common assets (Standard Bylaw 6). An alteration to common property without the advanced written permission of the strata corporation has been found to be a "fundamental and flagrant" breach of an owner's duties under the bylaws (*Strata Plan VR 390 v. Harvey*, 2010 BCSC 715 at para.23). See also *Gray v. Strata Plan VR 840* (1994), 41 R.P.R. (2d) 79 (B.C.S.C) where it was held that the strata corporation's refusal to approve an alteration to an LCP deck was not oppressive or unfairly prejudicial to an owner.
>
> As noted above, if the proposed alteration will result in a significant change in the use or appearance of the common property, the proposed alteration must also be approved by a 3/4 vote of the owners (s. 71). …"

[27] As discussed above, the effect of s. 26 of the *SPA* is that the written approval of the BA Strata Corporation referred to in Bylaws 4 and 5 must be provided by the BASC.

[28] BA 2003 Bylaw 19 provides that the BASC can delegate some or all of its powers and duties to a person. That Bylaw is as follows:

> **19. Delegation of Council's Powers and Duties**
>
> (1) Subject to Subsections (2) to (4), the Council may delegate some or all of its powers and duties to one or more Council members or persons who are not members of the Council and may revoke the delegation.
>
> (2) The Council may delegate its spending powers or duties but only by a Resolution that (a) delegates the authority to make an expenditure of a specific amount for a specific purpose, or (b) delegates the general authority to make expenditures in accordance with Subsection (3).
>
> (3) A delegation of a general authority to make expenditures must (a) set a maximum amount that may be spent, and (b) indicate the purposes for which, or the conditions under which, the money may be spent.
>
> (4) The Council may not delegate powers to determine, based upon the facts of a particular case
>
> > (a) whether a person has contravened a Bylaw or Rule, or
> >
> > (b) whether a person should be fined and the amount of the fine.

[29] Section 164 of the *SPA* states as follows:

> **Preventing or remedying unfair acts**
>
> **164** (1) On application of an owner or tenant, the Supreme Court may make any interim or final order it considers necessary to prevent or remedy a significantly unfair
>
> > (a) action or threatened action by, or decision of, the strata corporation, including the council, in relation to the owner or tenant, or
> >
> > (b) exercise of voting rights by a person who holds 50% or more of the votes, including proxies, at an annual or special general meeting.
>
> (2) For the purposes of subsection (1), the court may
>
> > (a) direct or prohibit an act of the strata corporation, the council, or the person who holds 50% or more of the votes,
> >
> > (b) vary a transaction or resolution, and
> >
> > (c) regulate the conduct of the strata corporation's future affairs.

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IV. FACTS

[30] The evidence conflicted about what was said at the November 17, 2012 AGM ("AGM 2012") about the proposed changes to Duplex roof, if anything was said. As discussed below, in my opinion, it is not necessary to decide what was said at the AGM 2012, but in case I am wrong, I set out the conflicting evidence and my conclusions.

[31] Because of the allegations that the BA Strata Corporation treated the Sherwoods and Sharps unfairly, it is unfortunately necessary to include in this chronology significant detail about what the BA Strata Corporation was asked to do and what it did, and the context of the events, including some of the extensive correspondence by email.

A. Background

[32] Beach Acres was built in about 1982 as a holiday resort. It had a variety of buildings, including about six beachfront duplex units.

[33] In 1987, Beach Acres was subdivided into condominium units, creating the BA Strata Corporation.

[34] The Sherwoods purchased the Sherwood SL in Beach Acres in 1996. Cinnabar purchased the Sharp SL in 1997. At the time, the Sherwood SL had a common wall with the Sharp SL. Each unit was about 506 square feet. Each unit had a sliding glass door facing the beach. The patio on the beachside, the yard on the beachside, and the side yards were all designated as LCP.

[35] I will refer to the beach as being east of the Duplex, although it is more northeast, and some of the evidence referred to the beach as being north of the Duplex. On the basis that the beach is east of the Duplex, the Sherwood SL was north of the Sharp SL, and the south wall of the Sherwood SL was common with the north wall of the Sharp SL.

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[36] The Duplex is located near the Strait of Georgia. It lies on a flat area between a relatively steep slope and the foreshore. The Duplex is about 80 meters from the natural boundary of the foreshore, and is approximately 1 meter higher than the elevation at the natural boundary. Buildings directly adjacent to the Duplex are at the same elevation as the Duplex, but are about 1.5 meters closer to or further from the natural boundary.

[37] The Duplex had an irregular shape, as visible in Appendix A. The beachside exterior wall of both the Sherwood SL and the Sharp SL was beside each unit's kitchen and living room. The kitchen was also beside the common wall. The beachside exterior kitchen wall projected onto the patio towards the beach, while in comparison with the kitchen wall, the beachside exterior living room wall was recessed. There were sliding glass doors from the living room onto the patio.

[38] At all material times, the BA Strata Corporation used the services of Bayview Strata Services Inc. ("Bayview"), a property management company. Bayview assisted the BA Strata Corporation by, among other things, preparing agendas, providing notices to owners as required by the *SPA*, attending meetings of the BA Strata Corporation and BASC and preparing minutes of those meetings, preparing and sending correspondence as directed by the BASC, and generally providing advice to assist the BA Strata Corporation to comply with requirements for condominiums. Mr. Moran was the Bayview managing broker, and he was assisted by Ms. Stoneage.

[39] At all material times, the parties were aware that the owner of unit 19 in the BA Strata Corporation ("Unit 19 Owner") had expressed the view that he would not agree to changes to a unit's habitable area. As a result, the parties believed that it would not be possible to obtain the unanimous approval required under s. 70(4) of the *SPA* for changes to the habitable area of a unit in the BA Strata Corporation.

[40] At all material times, about one-third of the owners of units in the BA Strata Corporation used their units exclusively for themselves and friends and family, often staying at Beach Acres for weekends and the summer. About two-thirds of the

owners put their units in a rental pool, and the units were rented on a daily or weekly basis, particularly in the summer. Some owners rented their units on a monthly or longer basis in winter, and for the summer months, either put their unit in the rental pool or used their unit for themselves.

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[41] The Sherwoods have never offered the Sherwood SL for rent through the rental pool. Before November 2012, the Sharp SL was usually rented for long-term rentals in the winter, and rented in the summer through the rental pool (except for the weeks that the Sharps used the unit).

[42] Cinnabar received taxable income of almost $12,000 for the rental of the Sharp SL during the period from June 1, 2008 to May 31, 2009.

[43] The Sharp SL was rented through the rental pool for the period of April 1, 2009 through September 30, 2009, with the exception of about two weeks.

[44] The Sherwoods and the Sharps had a good neighbour relationship for about 16 years, from 1997 until 2013. The problems arose only in connection with the renovation. Prior to the problems between the Sherwoods and the Sharps, the Sherwoods usually stayed in the Sherwood SL about three months a year, and the Sharps stayed in the Sharp SL a few weeks a year.

B. 2010: Wilson 2010 Opinions

[45] Cinnabar received taxable income of almost $13,000 for the period from June 1, 2009 to May 31, 2010.

[46] The Sharp SL was rented through the rental pool for the period of March 1, 2010 through September 30, 2010, with the exception of about two weeks.

[47] At some point in 2010, the BA Strata Corporation was concerned about the requirements for renovations. Ms. Wilson, a lawyer, provided legal opinions dated March 27, 2010 and August 9, 2010 (“Wilson 2010 Opinions”) in which she concluded that the strata lots in question were probably commercial as opposed to residential, although she concluded that the issue was not “cut and dry”.

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[48] Ms. Sharp was elected as a member of the BASC at the BA Strata Corporation AGM on November 13, 2010. This was for a one-year term ending at the AGM in late 2011.

C. 2011: First Sharp Renovation Application and Withdrawal

[49] Cinnabar received taxable income of about $9,000 for the period from June 1, 2010 to May 31, 2011.

[50] The Sharp SL was rented through the rental pool for the period of March 1, 2011 through September 30, 2011, with the exception of about three weeks.

[51] Ms. Sharp sent Mr. Moran an email dated October 2, 2011, in which she set out proposed changes to the Sharp SL, including extending the living room so that it was in line with the outside wall of the kitchen. She stated that the increase would be less than ten percent of the total area of 506 square feet.

[52] As set out above, Regulation 5.1 permitted minor increases in a strata unit's habitable area. Among the requirements was that the unit in question be a "residential strata lot" and that the increase is less than 10% of the habitable area. As stated, in the *SPA*, the term "residential strata lot" means a strata lot "designed or intended to be used primarily as a residence".

[53] Ms. Wilson provided an updated opinion letter dated October 26, 2011 ("Wilson Opinion October 2011") to the BA Strata Corporation. The Wilson Opinion October 2011 discussed how to determine whether strata lots were residential or commercial. The letter included the following:

> The Courts will determine the designation based on all of the surrounding facts, including:
>
> 1. What is the primary use of the Strata lot - residence or resort? In this case, resort.
>
> 2. Are transient or short term rentals permitted? Yes, subject to the use covenant.
>
> 3. What is the zoning of the property? Commercial.
>
> 4. How is the strata lot taxed? Residential.

> 5. Are strata fees subject to tax? No.
>
> 6. Do occupants have the intention of staying for some time? If the use covenant complied with, at least 3 months.
>
> 7. Are the units occupied as a private residence? No.
>
> 8. Do the occupants live out of a suitcase? Most likely, yes.
>
> 9. Does one bring all one's possessions to the unit? No.
>
> 10. Does the occupant have an intention of establishing roots in the community? Likely no.
>
> 11. Are furniture and cooking facilities included in the unit? Yes.
>
> …
>
> This is not a clear cut matter and if this matter was to proceed to Court, it could go either way. At this time, given the facts provided, I am of the view that it is more likely than not that the strata lots are commercial. … Therefore, a unanimous vote of owners is required to change the unit entitlement formula. If the vote fails, then the statute prohibits the alteration. [BASC] has no discretion to authorize the alteration.
>
> Given the uncertainty, I believe that it would be prudent to require a unanimous resolution of owners to approve an amendment to the schedule of unit entitlement to address any increase or decrease in habitable area.

[54] Mr. Cutt, then president of the BASC, sent Ms. Sharp an email dated October 27, 2011, asking the Sharps to withdraw their application for renovation of the Sharp SL. The Sharps did so.

[55] The Sharp SL was rented to a single tenant for a period including December 2011 through February 2012.

D. 2012: Including AGM 2012 and BASC Meeting November 2012

[56] The Sharp SL was rented through the rental pool for the period including July 1, 2012 through October 31, 2012, with the exception of about three weeks.

[57] By late 2012, both the Sharps and the Sherwoods were interested in enclosing about 34 square feet of patio in their respective strata lots, and changing that area from LCP to an interior, habitable part of the strata unit. This required a number of approvals.

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[58] First, because that would be increasing the habitable area of the unit, that required unanimous approval of the owners, unless the requirements of Regulation 5.1 were met. If those requirements were met, a resolution passed by a ¾ vote would be sufficient.

[59] Second, because it was also a significant change in the use of the patio, which is LCP and therefore common property, it required a resolution passed by a ¾ vote of the owners ("¾ Resolution"), as required by s. 71 of the *SPA*.

[60] Third, if it involved a change in the use or appearance of the roof and exterior walls, which are common property, it would also require a ¾ Resolution pursuant to s. 71 of the *SPA*.

[61] Fourth, because it would involve common property within the boundaries of a strata lot, it required the written approval of the "strata corporation" under Bylaws 4 and 5 of the BA 2003 Bylaws. That meant the approval of the BASC because of s. 4 of the *SPA*.

[62] Fifth, because the Duplex is in the City boundaries, any renovation required a BP from the City and compliance with the City's requirements, which requires compliance with the Building Code.

[63] On September 30, 2012, Ms. Sharp sent two emails to Mr. Moran seeking to make changes to the Sharp SL. The earlier email asked to expand the outside storage shed. The second email was similar to the email sent about a year earlier. It referred to four proposed changes, saying they would result in an increase in the (habitable) area by about 50 square feet, being less than ten percent of the total area of 506 square feet. The four proposed changes were described as follows:

a) increase the size of the bathroom by incorporating the refuse room into it;

b) move the living room wall forward by 37 inches (onto the LCP patio), so the wall is in line with the outside wall of the kitchen;

c) incorporate the storage room into the main bedroom; and

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d) move some of the internal walls.

[64] Ms. Sharp's request was considered by the BASC at a meeting on October 12, 2012. The minutes of that meeting include the following:

> Andrew Rushforth [at the time, a member of the BASC who is a professional structural engineer] reviewed the calculations to determine whether the proposal exceeded the 10% increase in habitable space that is allowed under the current bylaws [sic - Regulation 5.1] for unit entitlement and explained that she [Ms. Sharp] would need to adjust her request to fit within the requirement. He further explained that any aesthetic change to the outside of the building requires a ¾ vote at a General Meeting. The owner was advised to check on the footprint of her building and discuss her renovations with the [City] Building Department to determine their requirements and limitations.

[65] The Sharps and the Sherwoods discussed with each other the idea of enclosing about 13 ½ square feet of the patio in their respective units. Both couples decided they would like to have their proposal considered at the AGM 2012.

[66] I refer here to email correspondence relating to roof design because it explains the context of the discussions at the AGM 2012.

[67] Ms. Sharp sent an email to Mr. Rushforth on October 21, 2012. It included the following:

> In order to have an esthetic appearance, we decided to change the front kitchen window to a bay window to give the front of the building some contour. … The difficulty for us is that the roof line is too low to accommodate the height of the sliding door and the bay window. I am wondering if you could tell us how you did your unit to accommodate that. …

[68] Also on October 21, 2012, Ms. Sherwood sent Ms. Sharp an email. Ms. Sherwood referred to discussions with her husband and son-in-law. Her email included the following:

> …they both wondered if a gable shape over a bay window would pass because it is so different than the other cabins on the beach. If you want to put in a bay window without a gable over it the only way is to change the pitch of the roof and make it higher on the beach side.

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[69] Ms. Sharp responded to Ms. Sherwood with an email including the following:

> I agree. We have to put a peak on the sliding door side otherwise the roof is too low to fit the door as well. How much more does it cost to change the roof line? Would it be too big construction? None of us can draw very well. I hoped to get a rough copy to you for input but it was too hard to draw since it could not fit without changing the roof line. Can any of you draw? We have to figure out how much to [extend] the roof to fit the door and the window first.
> …

[70] Ms. Sharp sent Ms. Sherwood a second email on October 22, 2012. It included a drawing showing a gable over the sliding doors and bay windows. The email included this:

> I email you the drawing below. I agree it will be pretty hard to pass. It will change the roof line.

[71] Later the same day, Ms. Sherwood sent Ms. Sharp an email including the following:

> … One thing I was thinking do you think it would be wise to [submit] two plans. The reason I say this is if they say no to the peak is that the end of that till next year. If we also have the one with the bay window but the same straight roof (we know we would have to change the pitch) if they say no to the peak at least we still have something on the table. Just a suggestion what you are comfortable with is good with me.

[72] Ms. Sharp responded to Ms. Sherwood with an email as follows:

> I think we have two options. 1) If we want to fit the sliding door, we have to raise the roof so the bay window would fit too. 2) If we don't want to raise the roof, we put a peak over the sliding door so we would not have a bay window. Or we could also make three. The third one would be to raise the roof but only push the sliding door out.

[73] Mr. Rushforth responded to Ms. Sharp's email of the previous day with an email on October 22, 2012. It included the following:

> On #29 the existing sliding door did not change [its] position. The bay window fitted under the existing roof as well.
>
> In [your] case the new position of the sliding door will need about a headroom of 6 ft. 8 inches which I would have thought will be available (even though the ceiling might need to be a bit lower on the inside, say as far as the new beam that will go in. I suggest [you draw] it up as you think and just say that some refinement in the details may be required when [BP drawings] are done and

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> to receive final approval from [BASC] once approval at the AGM has been received.

[74] The Sharps and the Sherwoods jointly sent an email to Mr. Moran dated October 23, 2012, which I refer to as the "Joint October 2012 Email". The written part of the email does not refer to the roof. It is as follows:

> Dear Strata Members.
>
> We, the owners of [the Sherwood SL and the Sharp SL], would like to present our renovation proposal to the AGM for approval.
>
> Here is an outline of the plan we have for renovating [the Sherwood SL and the Sharp SL]. The main thing we would like to do is that we want to level off the front of the cottage, by moving the living room wall forward by 37 inches, so it is in line with the outside wall of the kitchen. The final look would be similar to Units #15, #16, #17 and #18, but it would only be one storey. This will increase the total area by 33.68 square feet.
>
> [The Sharp SL] would also want to incorporate the storage room into the main bedroom. We also want to move some of the internal walls, to change the internal dimensions of the rooms. This will increase the area by about 13.67 square feet so the total increase will be 47.35 square feet. This increase is less than 10% percent [sic] of the total area of 473.78 square feet.
>
> We have included before and after drawings of the proposed alterations.
>
> We hope to get strata members' support for our renovation. All the buildings in [Beach Acres] are about 30 years old. Many new buildings have been built around us. We are facing the challenge of rising maintenance cost and competition from other newly built resort[s]. Improvements which fit in the existing environment would benefit the resort, by both decreasing maintenance costs and benefitting the rental pool. A case like ours will save thousands of dollars for the [BA Strata Corporation], as the siding and sliding doors that will be replaced are in poor repair now and would have to be paid for by the [BA Strata Corporation] in the future.

[75] This Joint October 2012 Email attached three items, being two floor plans and one computer generated image ("CGI"), all of which are attached to these reasons for judgment as Appendix D. The first floor plan showed the existing floor plan, and the Sherwood SL is on the left, the Sharp SL is on the right, and the beach is beyond the top of the drawing. The second floor plan includes arrows indicating the proposed movement of the living room walls over part of the patio, and with respect to the Sharp SL, showing proposed movement of the main bedroom walls including enclosing the storage room. The CGI is difficult to interpret, but probably shows a One-Slope Roof Design.

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[76] I refer to the Joint October 2012 Email together with its attached floor plans and CGI as the "October 2012 Joint Proposal".

[77] The *SPA* provides in s. 45 that a strata corporation must give every owner at least two weeks' written notice of an AGM or special general meeting ("SGM"), and the notice must include a description of the matters that will be voted on at the meeting, including the proposed wording of any ¾ Resolution.

[78] The October 2012 Joint Proposal was included in the package ("Agenda Package AGM 2012") sent to the individual owners in the BA Strata Corporation in advance of the AGM 2012. The Agenda Package AGM 2012 included the following:

> 11.5 [Sherwood SL and Sharp SL] Renovation Proposal for approval
>
> BE IT RESOLVED by a ¾ vote that [the BA Strata Corporation] approves the request for renovations to [Sherwood SL] and [Sharp SL] subject to signing [A&I Agreement].

[79] Ms. Sharp believed that if the Sharp SL were classified as commercial, the proposed enclosure of part of the patio would require unanimous approval of the BA Strata Corporation, and that the Unit 19 Owner was unlikely to agree. As a result, the Sharps withdrew the Sharp SL from the rental pool at the end of October 2012, with the intention that the Sharp SL would be considered to be a residential strata lot.

[80] The Sharp SL has not been rented through the rental pool since October 31, 2012.

[81] The Sharps obtained an opinion letter signed by Mr. Walden of Cox, Taylor dated November 13, 2012 ("Walden Opinion November 2012"). The Walden Opinion November 2012 states that the proposed renovations require a ¾ vote at an AGM or a SGM to approve the alterations to common property, and the BA Strata Corporation must approve the less than 10% increase in the habitable square footage of the units. While the Walden Opinion November 2012 refers to Regulation 5.1, it does not refer to the requirement in that regulation that the proposed renovation be to a "residential strata lot".

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[82] The BASC sought and obtained a legal opinion concerning the October 2012 Joint Proposal. It received an opinion letter dated November 14, 2012 from C.D. Wilson Law Corporation ("Wilson Opinion November 2012"). The Wilson Opinion November 2012 assumed that the Sherwood SL and the Sharp SL were used for short term rentals and constituted commercial use.

[83] The Wilson Opinion November 2012 concluded that the October 2012 Joint Proposal would require a unanimous resolution of owners for approval of extending the living room onto the LCP patio. It included the following:

> [The "Extension" of the living room onto the LCP patio] likely does [require a unanimous resolution of owners for approval]. This Extension changes the character and boundaries of the Strata Lot. The owners wish to convert a portion of the LCP Patio into the habitable part of the Strata Lot thereby increasing the habitable area of the strata lot. Since an amendment to the Strata Plan is required to achieve this objective, the application constitutes a subdivision request. It is a permanent conversion of the LCP Patio into part of a strata lot. Moreover, the unit entitlement formula is affected by the proposal and this change requires a unanimous resolution of the owners.
>
> I must highlight that the owner is not increasing "the habitable part of the area of a residential strata lot, *by making a nonhabitable part of the strata lot habitable"* pursuant to section 70(4) of the [*SPA*]. The LCP Patio is not part of the Strata Lot. Hence, section 70(4) of the [*SPA*] does not apply. The owners wish to increase the boundaries and the building envelope of the strata lot by constructing an addition onto [LCP].
>
> Therefore, s. 70(4) of the [*SPA*] and the minor changes exemption set out in Regulation 5.1 of 10% and less than 20 square meters does not apply to the Extension.
>
> [Referring to the "Alterations" of incorporating the storage room into the main bedroom and moving interior walls increasing the habitable area by about 13.67 square feet]
>
> Most likely [the Alterations require] a unanimous resolution. …
>
> If the strata lot is commercial, then a unanimous resolution of owners is required to increase the habitable area of the Strata Lot. Since the units are rented on a short term basis, I believe that the units are likely commercial use as opposed to residential. As stated in my previous opinion, this is a question of fact.
>
> …
>
> If the strata lot is residential and the unit entitlement formula is based on habitable area, then an exemption would be available.

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[84] Mr. Moran sent an email dated November 15, 2012 to the Sherwoods and the Sharps, which enclosed a copy of the Wilson Opinion November 2012, and asked the Sherwoods and Sharps to withdraw their renovation request from the agenda for the AGM 2012. It made the request on the basis that the request could not be approved at that meeting, based on the Wilson Opinion November 2012 conclusion that unanimity was required, and on the expectation that the Unit 19 Owner would vote against the resolution.

[85] The Sharps and Sherwoods declined to withdraw their proposal. They responded with an email dated November 15, 2012, addressed to the members of the BASC. This email attaches a copy of the Walden Opinion November 2012. It also argues that the Sherwood SL and Sharp SL are residential units, addressing the factors set out in the Wilson Opinion October 2011. It refers to the fact that a BP is required for the proposed renovations.

[86] Ms. Sharp sent an email to Mr. Moran and the BASC at 8:22 a.m. on the morning of November 17, 2012, the day on which the AGM 2012 was scheduled to begin at 9 a.m. ("Sharp Early November 17, 2012 Email"). This email refers to being sent by both the Sharps and the Sherwoods. It includes the following:

> We would like to make a proposal to allow a vote for our renovation of [the Sharp SL and the Sherwood SL] to proceed. We will accept responsibility for legal action taken against our renovation proposal, by Unit #19. This will take the responsibility from the [BA Strata Corporation] and [BASC], and transfer it to us.
>
> In the event that [the BASC] chooses not to accept the above proposal, then we will seek further remedies from our legal counsel.

[87] There were four meeting segments on November 17, 2012. The first segment was the commencement of the AGM. The second was a meeting during a break ("AGM 2012 Break Meeting"). The third was the continuation of the AGM. The fourth was a meeting of the newly-elected BASC ("BASC Meeting November 2012").

[88] A number of witnesses testified about what occurred at these four meeting segments. Their evidence differed, as discussed below.

[89] The minutes of the AGM 2012 record the presence of representatives of 26 owners in person, and 25 or 26 owners by proxy (one figure differs from the number of represented owners listed). The Unit 19 Owner is described as represented by proxy. The minutes state that passing a resolution requiring 75% vote requires 39 in favour.

[90] The minutes of the AGM 2012 include the following:

> 11.5 **[Sherwood SL and Sharp SL] Renovation Proposal for approval**
>
> Jim Cutt provided owners with a verbal report on the background for the request from [the Sherwoods and the Sharps]. This proposal was presented by [the Sharp SL] to [the BASC] at the October 12, 2012 [BASC] meeting. Following discussion, the owners agreed to modify the proposal to meet the requirement that the renovation not exceed 10% of habitable space.
>
> In response to a challenge to this decision by an owner, [BASC] sought clarification from Cora Wilson, C.D. Wilson Law Corp. What [BASC] received was an extensive letter [Wilson Opinion November 2012] outlining the complexity of the issue and the range of conclusions that can be drawn depending on assumptions and interpretations. She also indicated that on one set of assumptions the proposal could be interpreted as requiring a unanimous vote by owners. The much shorter legal opinion provided by the owners who were proposing the renovation [Walden Opinion November 2012] stated clearly that the proposal should be subject to a 75% vote by owners.
>
> An interesting discussion followed. The very strong sense of the meeting was that when [the BASC] was instructed to clarify the bylaws that dealt with alterations, it had never been the intention of owners that every proposed renovation be subject to endless and expensive legal interpretations, and that indeed [the BASC] should spend no more money on legal advice on such matters. Neither the [*SPA*] nor revisions to the Beach Acres bylaws to the best possible extent—as we have already attempted to do—can ever be complete and detailed enough to provide unequivocal guidance on every proposal. Every proposal is unique and therefore requires a reasonable, fair, practical—and expeditious—conclusion by owners on how best to proceed in the interests of the [BA Strata Corporation]. In this case the discussion noted the willingness of the proposers to modify their proposal according to the guidance offered by [BASC], the strong precedents set by virtually identical renovations made in neighbouring units, and the clear statement made by Cora Wilson at the 2011 AGM and added, by unanimous agreement, to the Minutes of that meeting (see item 4, above) that:
>
> *"Should an owner wish to alter or extend their unit they must first present to [the BASC] plans, and [BP] AND providing that they do not exceed 10% of the existing floor space AND THAT they get a ¾ vote of approval from the owners at an [AGM] or [SGM], they may go ahead with these plans."*

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> Chair Jim Cutt advised the meeting that there were still some concerns about inconclusive or conflicting legal interpretations regarding the [Sherwood SL and Sharp SL] renovation proposal, and owners agreed with the Chair's request that there be a short break.

[91] The AGM minutes continue as follows after reference to a break:

> [The BASC] met with [the Sherwoods and the Sharps] during the break, and accepted their proposal to deal with legal matters. When the AGM resumed, Brian Moran read out the following statement:
>
> > *"We would like to make a proposal to allow a vote for our renovation of [the Sherwood SL and the Sharp SL] to proceed. We will accept responsibility for legal action taken against our renovation proposal. This will take the responsibility from the [BA Strata Corporation and BASC] and transfer it to us. In the event that [the BASC] chooses not to accept the above proposal, then we will seek further remedies from our legal counsel. Respectfully,*
> >
> > *Owners of Strata Lots 13 and 24* (sic)*."*
> >
> > In light of this re-assurance, and the sense of the meeting with respect to precedents, fairness, and the flexibility and reasonableness of the proposal, it was agreed that the matter be put to a vote.
> >
> > **MOVED** … that **BE IT RESOLVED** by a ¾ vote that [the BA Strata Corporation] approves the request for renovations to [the Sherwood SL and the Sharp SL] subject to their signing [A&I Agreement] and assuming the costs of any legal action associated with the renovation proposal.
> >
> > For the motion: 46
> >
> > Opposed: 5
> >
> > Abstention: 1
> >
> > **CARRIED**

[92] I note that the reference to the proposal to deal with legal matters is similar to, but not exactly the same as, the wording in the Sharp Early November 17, 2012 Email. The difference is that the Sharp Early November 17, 2012 Email refers to accepting responsibility for legal action taken against the renovation proposal "by Unit #19", while the resolution recorded in the minutes does not refer to Unit #19. The Sherwoods say that the words "by Unit #19" should be included.

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[93] Also at the AGM 2012, the owners elected a new BASC. The AGM 2012 ended at 12:30 p.m. The new BASC held its first meeting, the BASC Meeting November 2012, starting at 1:00 p.m., shortly after the AGM 2012.

[94] The minutes of the BASC Meeting November 2012, include the following:

> 4.2 **Approval of Renovations for [the Sherwood SL and the Sharp SL]**
>
> **MOVED** … that Bayview writes a letter of approval to [the Sherwood SL and the Sharp SL] for their renovation requests subject to the review of building plans and [A&I Agreement] by Andrew Rushforth on behalf of [BASC].
>
> **CARRIED**
>
> **MOVED** … that all future renovation proposals by owners be supported by a legal opinion obtained at their expense.
>
> **CARRIED**

[95] That resolution from the BASC Meeting November 2012 was also included in the minutes of the AGM 2012. As a result, both the Sharps and Sherwoods were informed of it.

[96] Bayview sent the Sherwoods and the Sharps similar letters dated November 23, 2012 ("BA Strata Corporation November 2012 Approval Letters"). The letters include the following:

> This letter is to confirm approval of your renovation request for [the applicable strata lot] for the purpose of obtaining a [BP] from the [City] Planning Department.
>
> The [BA Strata Corporation] approved your request to renovate [the Sherwood SL and the Sharp SL] at the [AGM 2012].
>
> Please be advised that once you have obtained a [BP] from the [City], you are to provide a copy of the [BP] and building plans to [Bayview] for [BASC's] review.

[97] During November and December 2012, the Sharps and the Sherwoods, with the assistance of a designer, Johnsons Home Design, refined the renovation building plans.

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[98] Ms. Sharp sent Johnsons Home Design an email dated December 1, 2012 which included the following:

> I thought over the design after talking to you. I think the best way to approach this is to extend the roof all the way to the front without lifting the roof (or touching the rest of the roof). I am worried that if the roof was changed significantly, then the [City] would make you get everything up to the current building code. I don't think the [BA Strata Corporation] would approve any significant changes to the roof either. It is too big a change from what they have approved.

[99] I interpret Ms. Sharp's comments in the December 1, 2012 email as describing a Two-Slope Roof Design, which would add an extension to the lower part of the existing roof, over the double doors.

[100] The Sharps and the Sherwoods dealt separately with the City to obtain the BPs for the alterations to their respective strata lot.

E. January 1, 2013 to February 25, 2013, Including February 2013 Plans and BPs

[101] On January 2, 2013, Ms. Sharp sent an email to Mr. Rushforth, copied to Ms. Sherwood, attaching building plans dated December 20, 2012 ("December 2012 Plans") depicting the proposed renovations for both the Sherwood SL and the Sharp SL. In the email, Ms. Sharp wrote "[H]ere are the final drawings of [the Sherwood SL and the Sharp SL]." The right and left side elevations depict a Two-Slope Roof Design, essentially with the Original Roof at its relatively steep pitch, and an attached second roof or lip over the sliding glass doors to the patio which is less steep than the Original Roof. The "rear elevation" on the beachside shows a "new roof structure" over the sliding glass doors and windows. This Two-Slope Roof Design was sometimes referred to in the evidence as having a "lip", referring to the flatter part of the roof closer to the ground.

[102] By email dated January 17, 2013 addressed to Mr. Moran, Ms. Sharp requested BASC approval to add a new storage shed adjacent to the chimney for the Sharp SL. A sketch showing the proposed location of the new storage shed, but lacking any dimensions or construction details, was included with the request. The

sketch was an annotated version of the December 2012 Plans, and two roof pitches are visible near the proposed storage room.

[103] Ms. Sharp's request to add the new storage shed was approved by the BASC on January 18, 2013, subject to the BASC receiving approved drawings with measurements and an approved City BP. The minutes record the resolution as follows:

> **7.4 January 17, 2013 email request to add exterior storage shed to [Sharp SL]**
>
> [BASC] reviewed the request to install a storage shed on the outside of [the Sharp SL] and agreed that precedents have previously been set in other Beachfront units.
>
> **MOVED** … that [the BASC] approves the request to install a storage shed (non-habitable area), similar to those installed on other beachfront units, on the exterior of [the Sharp SL] subject to [the BASC] receiving the approved drawings with measurements and an approved [City BP];
>
> **AND THAT** the style of the door is coordinated with the Beach Acres Maintenance Manager.
>
> **CARRIED**

[104] Lewkowich Engineering Associates Ltd. ("LEA") provided a written report dated January 31, 2013 ("LEA January 2013 Opinion"), addressed to Ms. Sharp, but marked to the attention of Ms. Sharp and Mr. Sherwood. It is entitled "geotechnical site report". It refers to the proposed addition of a rear (beachside) wall "uninterrupted by a step out". It refers to the City's building inspector requiring the owners to provide a report, certified by a qualified professional, that the land may be safely used for the intended use. The letter includes the following:

> 3. It is LEA's opinion that the proposed additions will pose no additional risk to the land or occupants of the [Duplex], and would be safe - from a geotechnical perspective - for the use intended (residential building addition), with the probability of a geotechnical failure resulting in property damage of less than 10 percent (10 %) in 50 years, with the exception of geohazards due to a seismic event which are to be based on a 2 percent (2%) probability of exceedance in 50 years.

[105] The Sharps' planned alterations to the Sharp SL included relocating interior strata lot walls to increase the size of the bedrooms, but that was not fully detailed in the December 2012 Plans. These alterations, unique to the Sharp SL, were more

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fully expressed in a revised set of plans dated February 3, 2013 ("February 2013 Plans"). The February 2013 Plans showed a Two-Slope Roof Design, like the December 2012 Plans.

[106] Ms. Sharp sent a copy of the February 2013 Plans to Mr. Rushforth and Mr. Moran by email dated February 20, 2013. She also advised "we have just got the [BP]". At this point, Ms. Sharp had done exactly what the BA Strata Corporation requested in the BA Strata Corporation November 2012 Approval Letter, which was to provide a copy of the BP and building plans to Bayview for BASC's review.

[107] The City's BP dated February 21, 2013 to Cinnabar ("Sharp February 2013 BP") granted permission "in accordance with plans and specifications submitted and approved, and the [BP] terms and conditions outlined on the following page" for a construction value of $15,500. The terms and conditions stated the work detail as a "small addition of 40 sq ft to waterfront side of great room. New closet and washroom/master bedroom reconfiguration." The February 2013 Plans were attached to the Sharp February 2013 BP, although the plans were amended by crossing out the drawings relating to the Sherwood SL. The February 2013 Plans with those changes were stamped and signed on page one by Mr. Schopp, a Registered Building Official for the City.

[108] The Sherwoods also obtained a City BP in February 2013 ("Sherwood February 2013 BP").

[109] Mr. Moran sent the Sharp February 2013 BP to Mr. Rushforth, referring him to the BASC Meeting November 2012 minutes and the reference to approving the renovation requests "subject to the review of building plans and [A&I Agreement] by Andrew Rushforth on behalf of the [BASC]".

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F. February 26 to 28, 2013, Including A&I Agreement

[110] Mr. Rushforth responded to Mr. Moran with an email dated February 26, 2013, which is as follows:

> I think everything is in order. I am surprised there is no requirement from [the City] for engineering of the main beams being installed, although it does appear someone in the trade has given advice on this. The addition is at the limit of the 10% rule so they need to take care in not accidentally allowing it to "grow". Advise [the Sharp SL] that the dimensions on the drgs [drawings] should be to the outside of the plywood rather than the face of the studs, just to be on the safe side.

[111] Bayview sent the Sharps a letter dated February 26, 2013, which includes the following:

> We are in receipt of your renovation drawings and [BP] from the [City]. As per the [BASC November 2012 Meeting] the approval of your renovations to [the Sharp SL] was subject to the review of the building plans and [A&I Agreement] by Andrew Rushforth on behalf of [BASC].
>
> Andrew Rushforth has reviewed your drawings and confirmed the renovation is within the 10% rule and that care is taken to stay within the 10% during construction. He advises that the dimensions on the drawings should be to the outside of the plywood rather than the face of the studs just to be on the safe side.
>
> This letter is to confirm approval of your renovation request for [the Sharp SL] subject to you signing [the A&I Agreement] and returning it to [Bayview].
>
> I have enclosed a copy of the Agreement for completion and draw your attention to (i) that states that you are to employ qualified contractors, electricians and others to perform the work with the appropriate WorkSafe and liability coverage.
>
> I ask that you read the [A&I Agreement] carefully to ensure you understand that you are assuming future responsibility to repair and maintain the alterations to [the Sharp SL].
>
> It is understood that the new construction will meet the [City's] building codes and all materials will match the existing building materials and paint colours.
>
> Thank you for supplying [BASC] with your drawings and [BP] Li [Ms. Sharp] and best wishes with your renovation project. If you have any questions, may I suggest you contact Don Stoneage, Beach Acres Maintenance Manager who will be happy to assist you.
>
> If you have any questions regarding the foregoing, please contact my office.

[112] The BA Strata Corporation and Cinnabar signed an A&I Agreement dated February 26, 2013 ("Sharp A&I Agreement"). It does not attach plans and specifications. It includes the following:

> WHEREAS:
>
> A. Pursuant to any and all Restrictive Covenants registered against title to the Strata Lots and including the following objectives:
>
> (i) That the standards of the Resort as a whole may be maintained so as to promote, among other things, repeat rental business and goodwill for the Resort; and
>
> (ii) the restrictions set out in the bylaws of the Regional District of Nanaimo (now [City]) or obligations or liabilities imposed by statute or common law must be observed and complied with;
>
> B. Pursuant to the bylaws of the [BA Strata Corporation] and restrictive covenants registered against title to the Strata Lot an Owner requires the prior written permission of the [BA Strata Corporation] before making certain changes to his or her strata lot and/or the common property;
>
> C. [Cinnabar] has made an application dated *Feb. 27, 2013* to the [BA Strata Corporation] for the following Alterations:
>
> 1. *The outside wall facing the beach will be made straight by moving the living-room wall out so it is flush with the wall of the kitchen.*
>
> 2. *The door into the shed on the south-west corner will be removed and the wall will be made to cover the space where the door was located.*
>
> 3. *A new storage shed will be made that will fit on either side of the chimney.*
>
> in accordance with the plans and specifications attached to and forming part of this Agreement (the "Alterations");
>
> D. [Cinnabar] is the registered owner of [the Sharp SL];
>
> E. As a condition to the application and subject to fulfilling the conditions and obtaining any ¾ votes of owners for Alterations, the [BASC] requires that the parties execute and agree to be bound by this [A&I Agreement];
>
> NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants and agreements herein contained and the payment of ONE DOLLAR ($1.00) by each party to the

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other, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree as follows:

> 1. In order to obtain the final written approval for the Alterations from the [BA Strata Corporation], [Cinnabar] covenants and agrees with the [BA Strata Corporation] that he/she shall:
>
> > (a) before proceeding with the Alteration, obtain the preliminary written approval from the [BASC] by providing the following:
> >
> > > (i) the proposed specifications for the Alterations including the colour, size and appearance of the Alterations; and
> > >
> > > (ii) evidence that the Alterations comply with the terms of the registered restrictive covenants;
> >
> > (b) provide specifications for the Alterations to the satisfaction of the [BASC] from time to time, including details on qualities, quantities, colour, materials, size, location and any other specifications required by the [BASC] to provide approval;
> >
> > (c) obtain a report from a professional satisfactory to the [BA Strata Corporation] to review the plans and specifications at [Cinnabar's] cost addressing compliance with all applicable laws;
> >
> > (d) supply the [BA Strata Corporation] with a copy of all required building and electrical permits and permissions (the "Permits") before commencing work on the Alterations, or alternatively, upon request, the [BA Strata Corporation] will execute an agent's agreement authorizing [Cinnabar] to apply on its behalf to the Municipality for the Permits required for the Alterations and [Cinnabar] will provide a copy of the Permits to the [BA Strata Corporation] before commencing work, and the costs of the Permits to be borne by [Cinnabar];
> >
> > (e) <u>cause all work on the Alterations to be performed</u> promptly, in a good and workmanlike manner and <u>in compliance with</u> the British Columbia Building Code ("BCBC") and <u>all other applicable laws</u>;
> >
> > (f) cause all work to be conducted in accordance with the [BA Strata Corporation's]

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> bylaws and the noise bylaws of the [City] so as to not cause a nuisance or disturb the surrounding owners;
>
> (g) assume all costs and expenses related to the Alterations;
>
> (h) retain at [Cinnabar's] sole expense, a professional electrician, architect or engineer satisfactory to the [BA Strata Corporation] to perform the work related to the Alterations;
>
> (i) employ qualified contractors, electricians and others to perform the work on the Alterations;
>
> (j) provide the [BA Strata Corporation] with satisfactory evidence that adequate insurance coverage is in place for the Alterations as required by this Agreement before commencing work and to ensure that such coverage is in place at all times;
>
> (k) assume responsibility to repair, maintain and replace the Alterations to the [Sharp SL] or the [LCP] at his/her sole cost and if [Cinnabar] fails to repair and maintain the Alterations after notice to that effect from the [BA Strata Corporation], then the [BA Strata Corporation] may perform the work on behalf of [Cinnabar] and charge all expenses related to that work to [Cinnabar], including any legal costs as between a solicitor and his or her own client;
>
> (l) the [BA Strata Corporation] shall repair, maintain and replace the Alterations, if approved by the [BASC] to the common property on behalf of [Cinnabar] and all expenses related to that work shall be charged to [Cinnabar], including any legal costs as between a solicitor and his or her own client;
>
> (m) assume responsibility to insure the Alterations at his or her sole cost and if [Cinnabar] fails to insure or maintain insurance on the Alterations, then the [BA Strata Corporation] may obtain insurance on behalf of [Cinnabar] and charge all expenses related to that insurance to [Cinnabar], including any legal costs as between a solicitor and his or her own client;
>
> (n) indemnify the [BA Strata Corporation] in accordance with the terms of this Agreement, including payment of any legal costs on a full indemnity basis;

(o) pay the cost of preparing this Agreement forthwith upon demand, including any costs or expenses incurred by legal counsel for the [BA Strata Corporation]; and,

(p) pay the costs to register this Agreement at the Land Title Office, if required.

2. Upon completion of the installation of the Alterations, [Cinnabar] shall provide the requisite certifications, confirm in writing that he or she has complied with the conditions set out in this Agreement and request the [BASC] to inspect the Alterations, and if so satisfied, the [BASC] shall provide final written approval for the Alterations.

INSURANCE & INDEMNITY

3. [Cinnabar] agrees to pay for any damage caused by the Alterations to the common property, common assets or those parts of a strata lot which the [BA Strata Corporation] must repair and maintain under the bylaws or insure under section 149 of the *SPA.*

4. [Cinnabar] agrees to reimburse the [BA Strata Corporation] for the expense of any maintenance, repair or replacement and any loss or damage to that owner's strata lot, common property, [LCP] or the contents of same arising out of or related to the Alterations if:

(a) that owner is responsible for the loss or damage; or

(b) if the loss or damage arises out of or is caused by or results from an act, omission, negligence or carelessness of that owner or the owner's employees, contractors, agents, volunteers or other similar person,

but only to the extent that such expense is not met by the proceeds received from any applicable insurance policy.

…

6. Any amount owing by [Cinnabar] to the [BA Strata Corporation] pursuant to this Agreement, including legal costs, shall be charged to [Cinnabar] and shall become due and payable as part of the owner's monthly assessment on the first of the month following the date on which the cost or expenses was incurred.

…

9. [Cinnabar] hereby agrees to indemnify and save harmless the [BA Strata Corporation] and its council members, representatives, agents, directors, officers, employees, contractors, managers, administrators, successors and assigns, from and against any and all claims, actions, causes

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> of action, liability, losses, damage, suits or costs, including legal costs as between a solicitor and his or her own client, arising from, but not limited to, the following:
>
> > (a) any and all claims, liability or damage to the building envelope or to the common property, the [LCP] or the [Sharp SL] arising out of or related to the installation of the Alterations, or any other consequential damage arising out of the Alterations;
> >
> > …
> >
> > (d) The grant of permission by the [BASC] and/or the [BA Strata Corporation] to [Cinnabar] to alter common property, the [Sharp SL] or [LCP];
> >
> > (e) Any damage cause, in whole or in part, by the Alterations;
> >
> > (f) Any repair or maintenance or replacement costs related to the Alterations at any time during the term of this Agreement;
> >
> > (g) Any costs or expenses related to obtaining and maintaining applicable insurance coverage required pursuant to this Agreement; and/or,
> >
> > (h) Any other damage, costs or expenses arising out of the grant of permission or the installation of the Alterations or anything related to the Alterations and affixed to or placed on the common property, the [Sharp SL] or [LCP].
>
> …
>
> [Underlining added.]

[113] On February 26, 2013, Ms. Sharp received a letter confirming the BA Strata Corporation's approval of the renovation proposal subject to the Sharp A&I Agreement. The letter includes the following:

> We are in receipt of your renovation drawings and [BP] from the [City]. As per the [BASC Meeting November 2012] the approval of your renovations to [the Sharp SL] was subject to the review of the building plans and [A&I Agreement] by Andrew Rushforth on behalf of [BASC].
>
> Andrew Rushforth has reviewed your drawings and confirmed the renovations are within the 10% rule. …
>
> This letter is to confirm approval of your renovation request for [the Sharp SL] subject to you signing [the A&I Agreement] and returning it to [Bayview].

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[114] The BA Strata Corporation argued that this letter demonstrated that the approval at the AGM 2012 was only an approval in principle, and Ms. Sharp required the further approval of the BASC, which had the task of approving the final design and construction details.

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G. March 1, 2013 to April 11, 2013

[115] Ms. Sharp sent an email intended for Mr. Rushforth (sent to his wife's email address) dated March 12, 2013 in which Ms. Sharp discusses changes to the habitable area of the Sharp SL. Her email includes the following:

> … The drawing for the existing floor plan of the closet is not accurate. The draftsman did not get into our unit since ours was occupied by a long term tenant. He went in unit 9 or 10, which one I don't remember exactly. I thought they were all the same. However, the unit he went in is not exactly the same as ours. …

[116] Ms. Sharp sent Mr. Moran an email dated March 24, 2013, with a copy to Mr. Rushforth. It encloses a floor plan described as "updated", and refers to the Sharp SL being different from unit #9.

[117] In March 2013, Ms. Sharp and her framing contractor, Stuart Redfern, devised a new roof design for the alterations to the Sharp SL. Ms. Sharp understood that putting a large wooden beam in the attic space would provide greater ceiling height in the kitchen, and could be done if the roof design were changed from the February 2013 Plans to a One-Slope Roof Design. She did not think this was an important change, but she knew it was different from the February 2013 Plans.

[118] Ms. Sharp asked Mr. Redfern to note the changes on the February 2013 Plans. Mr. Redfern had a copy of the February 2013 Plans which included Mr. Schopp's signature on page one, and Mr. Redfern made handwritten changes on that copy. The important changes are: a) there is a reference on page 2 to a continuous roof, b) the sketch on page 3 shows a One-Slope Roof Design on the beachside of the Sharp SL which is over the Original Roof and is not as steep, and c) a new sketch on page 4 shows a beam between the Original Roof and the higher proposed roof, with an 8 foot ceiling where the new roof meets the exterior wall. I

refer to the design reflected in these handwritten changes as the “One-Slope Roof March 2013 Design”.

[119] Ms. Sharp also decided to build a wall enclosing the chimney.

[120] Mr. Redfern proceeded to build the One-Slope Roof March 2013 Design, and enclose the chimney, on the Sharp SL.

[121] There is disagreement about what was said in March 2013 in conversations between Ms. Sherwood and Ms. Sharp, and between Ms. Sherwood and Mr. Redfern.

[122] Bayview wrote the Sharps a letter dated April 10, 2013. This letter requests a copy of liability insurance for the renovation project, and also states the following:

> We also require an “as built” final drawing for our records as you have made a number of changes to the drawing originally approved by [BASC]. I believe that the [City] will also require the “as built” drawings as they will be conducting the final inspection and will need to have all changes on file.

H. April 11 to 30, 2013, Including April 2013 Stop Work Order

[123] Mr. Schopp sent an email dated April 12, 2013 to Mr. Moran at Bayview, with a copy to Ms. Sharp. I refer to this email as the “April 2013 Stop Work Order”. It includes the following:

> It has been brought to our attention that the construction taking place at [the Sharp SL] under [the Sharp February 2013 BP] has exceeded what was approved by the [BP]. Please see the attached pictures. Specifically, the exterior boundaries of [the Sharp SL] have been expanded onto the common property without [BA Strata Corporation] authorization and beyond what was authorized by the [BP]. The only perimeter extension that was authorized by [BP] was to the north. This area is limited to 3 ft x 8 ft 10.5 inches in area.
>
> As such we ask that [Cinnabar] STOP WORK today and remain stopped until they are in possession of a [BP] issued and authorized by [the City] that includes the work performed without a [BP] or the unauthorized work is removed.
>
> Moving forward so that everyone involved has a clear understanding of what is approved, such an approval must include a set of plans that clearly identifies that they have been accepted and approved by the [BASC].
>
> A site visit will take place on Monday April 15th, 2013 to confirm that work has stopped and that no further work has taken place. If work has not stopped

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> and we find it necessary, a stop work order will be placed on the structure and we will engage our bylaw compliance officers to investigate their options for ticketing.
>
> Please advise us asap that work has stopped.

[124] Mr. Schopp and Ms. Sharp spoke on the telephone on April 15, 2013. Mr. Schopp sent an email on April 16, 2013 in response to that telephone call. That email includes the following:

> …
>
> Further to our [April 2013 Stop Work Order] asking that work be discontinued at your project, all work should now be fully stopped at your project. There are a number of issues that will need to be resolved to move forward.
>
> …
>
> The [City] did not approve an addition of a storage shed as it was never included in the [BP] submission drawings. … Additions to structures require a [BP]. …
>
> …
>
> Moving forward, the following items need to be clarified and/or resolved before any work resumes inside or out or before any further inspections can take place. We need to confirm that the work to be done or is being done matches what was approved, both by the [BASC] and the [City].
>
> - A walk through with the owner to confirm that the total scope [of] work being performed matches what was submitted and approved. A new, revised floor plan and/or scope of work may need to be submitted for approval. … Revised fees may be applicable.
> - If you wish to retain the addition to the right side (elevation [drawing]) constructed without [BP] approval, the [BA Strata Corporation] must indicate in their approval of such an addition in writing on the plans to be submitted for approval, indicating that they approve of and are aware of the proposed addition to [the Sharp SL] as the construction would be taking place on common property and have the potential to increase and/or extend the size of [the Sharp SL] onto the common property. Also, you would be required to submit, with your application and new drawings, a schedule B from the original geotechnical engineer that the soils beneath the portions constructed without a [BP] are suitable and a schedule B from any structural engineer that the foundation system under the storage unit meets the 2012 building code along with proof of liability insurance from both engineers. This is required as it is considered to be an addition to the unit, not a stand alone accessory building.
> - Confirmation that you have registered the geotechnical covenant on the title of your unit as requested.

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- Confirm that you have engaged a BCLS (surveyor) to make the necessary adjustments to [the Sharp SL] once the areas approved by the [BA Strata Corporation] and [the City] are ultimately approved for construction by a [BP].

[125] Ms. Sharp met with Mr. Moran on April 17, 2013 and discussed her proposed renovations.

[126] The Sherwoods sent an email dated April 22, 2013 to Mr. Moran which includes the following:

> I emailed Kevin Peters, last week at City Hall, with regards to a question we had. He indicated they were addressing some issues with [the Sharp SL]'s additions. We felt that we needed to write you about a concern of ours. But at this point we are not sure what the issues are, although we suspect it might involve an outside wall.
>
> …
>
> We were very aware that there are Strata rules about changes to the **external envelope** of the cabins, and we felt we were taking the appropriate channels with a ¾ vote on what was submitted at the [AGM 2012].
>
> If there has been any changes at all to what was submitted, voted on and passed, we will be limiting our commitment with regards to accepting responsibility on behalf of [the BA Strata Corporation and the BASC], from any issues that would arise from the owners at the time of the [AGM 2012] of unit #19. We feel that changes of this nature are to be passed with a ¾ vote.
>
> If [the BASC] feels that they do have the authority to pass any **external** changes to the approved plan from the [AGM 2012], then we feel that it is only fair that [the BASC] should now assume the responsibility.

[127] Also on April 22, 2013, Ms. Sharp emailed the members of the BASC and Mr. Moran. Her email includes the following:

> The construction part of the project is going very well. In the past I have overseen the construction of a mixed used residential / commercial building. However, a multimillion dollar [building's] administrative work is not as complex as this one.
>
> I feel there must be some confusion with regard to how I have proceeded with the renovations to [the Sharp SL]. I would like to assure you that I have asked for permission for every step along the way, both from the [BA Strata Corporation] and from the [City]. …

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[128] Later on April 22, 2013, Ms. Sharp sent another email to the members of the BASC and Mr. Moran. It refers to Kevin Peters, the City's Chief Building Inspector. The email includes the following:

> I talked to Kevin Peters at the [City] this morning. He has been very helpful. He suggested that I send the changes I made to the [BASC] and have them validate them, and then submit a copy to the [City]. This will put the [City] and the [BASC] on the same page.
>
> <u>All the changes shown here have been previously communicated</u> with the City and [the BASC] via Brian [Moran], <u>except</u> the enclosure of the chimney and <u>the roofline</u> (please see the enclosed picture). …
>
> I hope [the BASC] can validate these changes so I can move on with the City to proceed with completion of the renovations to [the Sharp SL].
>
> [Underlining added.]

[129] Also on April 22, 2013, Mr. Moran sent the Sharps a letter by email and registered mail. It includes the following:

> I am writing in follow-up to our meeting with you on Wednesday, April 17, 2013 where you presented your proposed alterations for [the Sherwood SL and the Sharp SL].
>
> After reviewing the April 17, 2013 memo from Stan Schopp, Registered Building Official, [City], and my April 19, 2013 meeting with Kevin Peters, Chief Building Inspector, and the City clearly outlines what you are required to do to go forward with this project.
>
> In regards to your request for [the BASC's] approval for the further additions to your renovation:
>
>> 1. Please submit a <u>new set of plans</u> showing exactly what you intend to submit to the [City] for [the BASC's] approval. *No exception.*
>>
>> 2. [The BASC] will examine, possibly in consultation with legal advice and/or a BC Land Surveyor, if the proposed additions can take place and how to proceed. Such an approval might possibly set out some conditions including a further ¾ vote of approval at a [SGM] if required.
>>
>> 3. Following the appropriate advice, [the BASC] may approve your new set of plans and if so will prepare a letter of authorization from the [BASC] acknowledging that you are to take your plans to the [City] for approval. *Please note that this does not mean that the City will automatically accept or approve the plans.*
>>
>> 4. Once the [City] has approved your plans, you are to provide [Bayview] with a set of stamped approved plans (in red) and a [BP] <u>before</u> work commences.

By way of this letter, I am advising you that you will be invoiced for any legal, investigative or Bayview Administrative costs related to the approval of your renovation.

[Underlining in original.]

[130] Mr. Schopp sent Ms. Sharp an email on April 30, 2013, with a copy to Mr. Moran, which included the following:

I was by your property this morning as a result of a concern we have regarding installation of roof shingles on the water side (north [I refer to it in these reasons for judgment as being east]) on your addition. We are concerned that the roof slope has been reduced and that the certification of shingles used would no longer meet Building Code or Roofing Standard they were approved to. We have not resolved the venting requirements of the raised roof section to date either.

While there, I noticed the proximity of the newly renovated wall (east side [I refer to it in these reasons for judgment as south]) to the building next door and believe it no longer meets the Spatial Separation requirements for its type of construction components, at less than seven feet from the adjacent building.

Further to our last conversation on site where I considered accepting a 'marked up set of existing plans' to continue construction, there are far too many changes and missing information to continue without a complete set of new plans including Spatial Separation calculations, resolution to the roof venting issues above north [east] and east [south] wall construction, resolution on decommissioning of brick fireplace and chimney, roof and wall insulation upgrading to current code and confirmation that point loading on existing slab and loading of newly created exterior walls on existing slabs on grade will support this construction.

The changes to the approved plan have also affected the future roofline of [the Sherwood SL] which will no longer be able to comply with the conditions of its issued [BP] due to your changes.

'Before you begin addressing any of the above issues' we require confirmation from a Registered BC Land Surveyor that 'it is possible to and they will undertake relocation and register property boundaries' of the newly created exterior walls on [the Sharp SL and the Sherwood SL]'s unit entitlement. It will also be necessary to reconfigure the common property accordingly and address removal of the chimney from the common property that is now entirely surrounded by construction not shown on the approved [BP] plans.

All the above requires approval by the [BASC] prior to submission for a new [BP] to continue. I hope the above is self-explanatory, if not don't hesitate to call me.

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[131] The position of the BA Strata Corporation is that at this point, it did not understand the ramifications of the As-Built Sharp Roof, although it understood:

a) the City refused to approve the amended plans for the Sharp SL unless those amended plans were approved, in writing, by the BA Strata Corporation; and

b) the BA Strata Corporation could not approve amended plans for the Sharp SL without recanting on the approval of the plans for the Sherwood SL.

[132] The BA Strata Corporation's position is that it spent the latter part of April, May, and early June, 2013, endeavoring to learn what were the circumstances and the ramifications of the alterations made to the Sharp SL. In order to respond to or address the conflicting concerns, the BA Strata Corporation argued it needed to understand the following:

a) What had been built on the Sharp SL?

b) What had the BA Strata Corporation approved?

c) What had the City approved?

d) What was in the impact of what had been built on the Sharp SL for the Sherwood SL, which planned to build in the fall of 2013?

e) Had the Sherwoods agreed to the design change to the As-Built Sharp Roof?

f) How should the BA Strata Corporation respond to the situation?

I. May 2013

[133] LEA provided a letter dated May 3, 2013 addressed to Ms. Sharp ("LEA May 2013 Opinion"), which includes the following:

> 1. Lewkowich Engineering Associates Ltd. (LEA) has reviewed documentation provided by the client and from LEA's site visits to the property, in relation to the support of a beam and a shed that is attached to the exterior wall of the building.
>
> 2. Design plans for the renovation/addition were reviewed. The plans show each end of the beam carries approximately 8200 lbs. … so the required

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> support for each end of the beam translates into a footing with an area of 4 square feet. The end of the beam on the outside of the house is supported by a new footing, and the footing is large enough to support this end of the beam.
>
> 3. The end of the beam on the inside of the house is supported by a two ply 2x12 eight foot long header in the wall below the beam. Loads from the header are transferred to a series of wall studs supported by the original concrete floor slab. <u>The bearing for this end of the beam has become a Structural issue that should be evaluated by a Structural Engineer.</u> However, if the load from the beam across the room is distributed evenly by the header to the floor slab below, the bearing soils would be able to support the load.
>
> 4. When renovations to the adjoining unit are conducted, the owner/contractor for the other unit should pour a pad footing to support the side of the beam on the inside wall.
>
> [Underlining added.]

[134] Ms. Sherwood was concerned about the reference to the beam being a structural issue, but she did not raise her concern with the BASC until January 2014.

[135] Mr. Moran sent Ms. Sharp an email dated May 7, 2013, which includes the following:

> I am responding to your questions regarding having a meeting with yourself, the City Building Inspector, and members of [the BASC].
>
> I refer you to the April 16, 2013 email from Stan Schopp [where] he is asking that you complete a walk through with the Building Inspector. He states that you may be required to submit new drawings of the floor plan for [BASC] review. …
>
> …
>
> For this meeting we need to have the original plans approved by the City with your [BP]. The [BASC] needs to see plans with the original roof design that was approved by the City. You made hand-drawn changes to these plans that were not approved by [BASC].
>
> [The BASC] needs to see a new set of plans for everything you plan on doing to [the Sherwood SL and the Sharp SL] (i.e. roof design) for their review. You will also need approval from your neighbor Doug Sherwood ([Sherwood SL]) regarding the changes to the roof design as well as the land surveyor that what you plan to do meets all requirements. It will be [the BASC's] responsibility to review all changes to your strata lot and make sure the changes meet the [*SPA*], Beach Acres bylaws, etc.
>
> Upon receiving all the required information, I will arrange a meeting.

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[136] Ms. Sharp sent Mr. Moran an email dated May 9, 2013, which includes the following:

> After I read your letter, I could see how frustrated you are with the whole thing. If you had only talked to me, you would have found out that most things you mentioned in the letter I have already been (sic) solved with the City. … If we could have open discussions, we could solve all these concerns easily. Communication is the key.
>
> …
>
> I do not know exactly what the responsibility of the [BASC] is with our case. Please advise if I am wrong, but it appears to me that they are: 1) the appearance of the building is a [BA Strata Corporation] issue, which needs conform (sic) to the approval of AGM, 2) the addition cannot exceeds (sic) 10%, which will involve where the addition is. Anything else is the [City's] responsibility. If we can clearly establish the lines of responsibility, will make the problem a lot simpler, which will save a lot of time for everyone involved.
>
> The whole [BASC] would like to see us work together and move on. Please let's make an effort to do so.

[137] Mr. Cutt, the president of the BASC at the time, sent Ms. Sharp an email also dated May 9, 2013. Ms. Sharp objects to the decision of the BASC described in this email that Ms. Sharp should not discuss this matter further with BASC members by phone or email. Mr. Cutt's email includes the following:

> Further to our telephone conversation on Wednesday morning (May 8) and your e-mail to Brian [Moran] (copied to Andrew [Rushforth] and me) this morning (May 9), I consulted with [BASC] and with Brian's office and we reached the following conclusions. We are in full agreement with you that the only way to resolve all remaining issues is to have a meeting of all parties concerned--including [Bayview], [BASC], [the City], and your neighbour in [the Sherwood SL] as soon as possible. However, we also agreed that a pre-condition of a productive meeting is that all parties have all the necessary documentation. It follows that you should respond to the documentation requirements listed in Stan Schopp's e-mail of April 30, and re-iterated in Brian's e-mail of May 7, and deliver that response to [Bayview] prior to any meeting. When [BASC] has received and reviewed the documentation, Brian will then arrange the meeting of all parties at the earliest opportunity.
>
> Finally, we agreed that before that review by [BASC], there should be no further discussion with any [BASC] members by phone or e-mail.
>
> So there it is, Li [Ms. Sharp]. We too are anxious to get this resolved, and the first necessary step to resolution is ensuring that we have all the information required.
>
> [Underlining added.]

[138] Over the period March 15, 2013 through May 11, 2013, the Sharps paid Mr. Redfern about $14,000 for renovation work and materials.

[139] Mr. Sherwood sent Mr. Moran an email dated May 20, 2013, enclosing a letter of the same date addressed to Bayview and the members of the BASC. The letter includes the following:

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> We [the Sherwoods] are unable to attend any meeting regarding the Sharp's (sic) renovation if one takes place prior to June 8th, 2013, as France has called. Jim [Cutt] has directed us to write a letter about our concerns & position on this matter. If there is a meeting after we return then both Rosslyn & myself wish to attend and ask that we both be able to speak.
>
> Where do we begin with every rule of a renovation being broken in the building we share with the Sharp's (sic).
>
> Here is a list of our many concerns at this point.
>
> 1) Electrical – …
>
> 2) Plumbing – …
>
> 3) The Sharp's (sic) seem to think that they can take space from the utility shed & incorporate it into their cabin space. We have a few problems with this.
>
> …
>
> 4) The construction with regards to the wood burning chimney.
>
> …
>
> 5) They seem to have built an extra shed on the outside of the cabin.
>
> …
>
> 6) Roof – This one is too hard to comprehend, as we worked with the Sharps on the plans for our roofs. We both agreed, and then applied to the [City] for approval. We did everything required & received a [BP]. <u>The [City] informed us several weeks ago that the Sharps built another style roof, other than what they had a [BP] for. At this point we have plans & a [BP] for a roof we cannot build.</u> We also have discovered their roof was constructed without plans, [BPs] or even [BA Strata Corporation's] approval. The geo-Tech also has some questions about the lack of a footing on the northwest inside wall that is required to support the new beam. <u>We now have concerns about the structural integrity of our building.</u>
>
> …
>
> <u>As to their roof, it is on our property & we want it removed so that we can start our construction October 1, 2013, as planned.</u> We also feel that there is no need for a [BASC] or an AGM vote on this matter. We have agreed upon the roof & [BP], as do the Sharps. We feel that the style must be the same to look correct. The Sharps are on our property so there is only one vote that counts & that is ours. The [City] has also informed the Sharps if they apply for

> another plan they could be required to do an entitlement survey. That would be inconceivable to even think about putting us in that position.
>
> …
>
> You may let the Sharps know our position, so that they can make arrangements to remediate & construct the permitted roof.
>
> We appreciate management & [the BASC's] support on this matter & anticipate that you will not tolerate this total disregard of Beach Acres Rules, the [*SPA*] & the [City's] By-Laws.
>
> …
>
> [Underlining added.]

[140] Ms. Sharp also sent Mr. Moran an email enclosing a letter. Her email is dated May 24, 2013, and the enclosed letter is addressed to the BASC. The reference line of the email is "May 24 13 VIS 1549 Unit #14 Request for Strata Council Meeting". It includes the following:

> We have provided the information the City has required so far. We are waiting for the revised building plans, which should be ready soon.
>
> …
>
> The following is the explanation you requested in your letter dated May 7, 2013.
>
> 1) Shed
>
> …
>
> 2) Water Tank
>
> …
>
> 3) Roofline
>
> The designer of the renovation could not design the roofline to conform to the appearance we proposed in the [AGM 2012], without raising the peak of the roofline. However, raising the roofline cannot be done according to the City zoning bylaw, without a development permit. His solution was to design the roofline with two slopes. This wasn't visually the same as what was proposed at the [AGM 2012]. Also, this two slope design had a lower ceiling in the living room / kitchen area and a large exposed beam in that area. The Sherwoods and we were not happy with that design, however, we submitted it for the [BP] as it was the best the designer could do.
>
> The builder we hired, Stewart Redfern, worked out a way to solve all the problems we were not happy with. … Rosslyn [Sherwood] invited [Ms. Sharp] over for tea. Li [Ms. Sharp] explained what we were doing inside and also discussed how Stewart [Redfern] proposed raising the ceiling to eight feet and moving the beam up into the attic. Rosslyn was very happy that this could be done. …

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The construction started on the 4th of March. These discussions with Rosslyn took place the following week. At that time roof construction [had] not started. If the Sherwoods had any objection, we would have instructed Stewart to stop.

We did not hear any complaint from the Sherwoods, until April 30th, when Stan [Schopp] vaguely implied there may be some concerns from the Sherwoods regarding the changes to the roof. … [Ms. Sherwood sent Ms. Sharp a text saying] "As far as a talk about the reno[vation] I feel you are several weeks [too] late. We feel [it's] best to talk with [the BASC] and/or the [City] present".

We are puzzled and surprised why the Sherwoods are upset with the roof as it has been constructed. We don't understand why they changed their minds after the roof has been constructed. It meets the criteria that they expressed a desire to achieve: an eight foot ceiling with no exposed beam. The current roof conforms with the drawings submitted to the AGM for approval. It did not trigger the need for a development permit. At this point, we still have not heard what specifically the Sherwoods find objectionable with the roof as it has been constructed.

4) Complaint from Doug Sherwood [Sherwood SL]

The only complaint we heard from Doug Sherwood since the start of construction is regarding [the LEA May 2013 Opinion]. Doug sent Li [Ms. Sharp] a text message … [stating]: "Hi Li [Ms. Sharp] we received a copy of the geotechnical report. Before you spend [any more] money on reports we felt we should let you know we can not agree to the potentially problematic roof design you have installed." In that report the geotechnical engineer, who has been working for both [the Sherwood SL] and us from the start, advised that when the Sherwoods construct their side they should put a footing to support the microllam beam.

Both the geotechnical engineer and the structural engineer provided professional advice regarding the footing for the support of the microllam beam, regardless of what the roof design is. … We and [the Sherwood SL] each require footings on each side of the microllam beam, to support the microllam beam. The original plan approved by the City did not have these footings specified in it.

The main point is that in terms of structural load on either end of the microllam beam, the roof design as built is identical to the roof design as shown in the original plans. What we built does not [affect] anything the Sherwoods have to do on their side. It is to their advantage that they received this additional advice from the professional engineers, which we paid for, since the City will require this professional advice from the Sherwoods later.

With regard to these construction details about the structure and design of the roof, it makes sense that these are things that should be determined by professionals and the City. Technical details such as these cannot be resolved by the owners alone. The input of trained professionals should be the major determinant in arriving at a decision.

We want to make every effort to solve any disagreement with Rosslyn and Doug Sherwood, but they have made it clear they do not wish so discuss

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> their concerns with us. We would like to make any compromise, if possible. We would like to listen to any suggestions and advice the [BASC] provides.
>
> [Underlining added.]

[141] Mr. Cutt sent an email to the members of the BASC and Mr. Moran proposing to include the renovation of the Sharp SL as a major agenda item at the meeting of the BASC on June 14, 2013, and decide then how to proceed with the meeting of the Sharps, Sherwoods, Bayview, the City, and the BASC. Mr. Cutt's email includes the following:

> You have all received Li Sharp's letter and attachment of May 24 and request for a meeting to discuss the renovation issue in [the Sharp SL]. I need hardly say again how complex this issue has become, and how important it is that [the BASC] deliberate carefully and "get this one right"; for we are going to be setting a considerable precedent. … my proposal is that we make this matter a major agenda item at our June 14 [BASC] meeting, and decide then how to proceed with the meeting of all interested parties ([Sharp SL], [Sherwood SL] (if available--we have Doug Sherwood's concerns in writing), [Bayview], [City], and [the BASC]). I realize that this makes for another delay, but frankly think we need a face-to-face [BASC] meeting (with Brian's and Don's advice) to make an informed decision. Could you please let me know at your earliest convenience indicating whether you agree with this course of action, or whether you have some preferred alternative. If and when I have your agreement, I will respond to Li [Ms. Sharp].
>
> [Underlining added.]

[142] The BASC members agreed with Mr. Cutt's proposal. Mr. Cutt sent Ms. Sharp an email dated May 27, 2013 advising her that the BASC planned to meet on June 14, 2013 before responding to her, and to discuss the Sharp SL issues *in camera* "to ensure that all [BASC] members are fully informed and all concerns and questions resolved before we respond to you."

J. June 2013 Including BASC Meeting June 2013

[143] Mr. Schopp sent Mr. Moran and Ms. Sharp an email dated June 5, 2013, setting out what the City wanted to continue work on the Sharp SL project. The items listed include dated and initialed plans from Jorgenson Osmond Ltd. ("JOL"), a letter from the BASC "approving plans and acknowledging how much of the extension/addition is on Common Property and that the [BASC] approves same", and a corrected sketchplan from the surveyors JE Anderson & Associates ("JEA")

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approved by the BASC. This letter also states that the City is "willing to accept revisions approved by [the BASC] to amend [the] current [BP]" but the geo-technical report must be registered on the title to the Sharp SL. Mr. Schopp also wrote that "[w]e want to be perfectly clear we are not willing or able to authorize any work continuation without 'prior approval' by [the BASC]."

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[144] JOL provided plans dated June 5, 2013 for a One-Slope Roof Design on the Sharp SL, and Ms. Sharp left a copy with Mr. Rushforth.

[145] The BASC met on June 14, 2013 ("BASC Meeting June 2013"), to consider all the information received, including,

a) the conditions imposed by the City;

b) the submissions of Ms. Sharp;

c) the submissions of the Sherwoods;

d) the BA Strata Corporation's record of what was approved by the BA Strata Corporation (e.g. the minutes from the AGM 2012, the minutes from BASC meetings, and the recollections of the BASC members); and

e) the BASC's knowledge of the bylaws and the *SPA*.

At this time the BASC was proceeding without the benefit of legal advice.

[146] Not all the members of the BASC had a common understanding of the history and the circumstances which preceded the Sharp SL alterations. The statements at the time by BASC members conflicted. For example, Mr. Rushforth was of the view that the One-Slope Roof Design was shown in the CGI and that it was what was approved at the AGM 2012.

[147] The minutes of the BASC Meeting June 2013 include the following:

> *Following the Regular [BASC] Meeting, [BASC] conducted an In-Camera discussion regarding the Renovations to [the Sharp SL]. Following is the conclusion of those discussions:*
>
> - [BASC] will not authorize the new plans because what has been built is a significant change to what was approved at the [AGM 2012] and requires a ¾ vote of approval of all owners
> - The existing roof is a significant change to what was approved by owners and is built over another owner's Strata Lot.
> - …
> - Enclosure of common property is not permitted; therefore the framed wall and roof section that encloses the chimney must be removed; this is a significant change to what was approved
> - …
> - Owner can arrange [a SGM] (*at Owner's expense*) or wait until the November, 2013 [AGM] where a resolution for approval will be presented for owners' consideration/approval
> - There will be no further discussion with [BASC] or [Bayview] on this matter until after an [AGM or a SGM]
> - …

[148] Mr. Moran sent the Sharps a letter dated June 21, 2013. It described what the BASC decided at the BASC Meeting June 2013, including the reference to no further communication with Bayview or the BASC about the matter until there has been a SGM or an AGM. The letter refers to s. 71 of the *SPA* and the need for resolution passed by ¾ of the owners to make a significant change in the use or appearance of common property. The letter says "[w]e request that you consider the option of calling a [SGM], at your cost, so that your project can move forward. You also have the option of waiting until the November [AGM]."

[149] In June 2013, the Sherwoods told Bayview that the Sherwoods intended to start their renovation in September 2013, and that their plans were for the "original roof design that was approved at the [AGM 2012]", apparently referring to a Two-Slope Roof Design.

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K. July through September 2013: Lawyers

[150] Mr. Moran sent the Sharps a letter dated July 3, 2013, which referred to the Sherwoods' expressed intention to start renovations in September 2013. This letter includes the following:

> As you can appreciate, the roof cannot have two designs; therefore, before going forward with a motion of approval at [a SGM] or [an AGM], you will need to work out the details of the roof design with the Sherwoods. [Bayview] requires a letter of approval from Mr. and Mrs. Sherwood that they are in agreement to change their roof design to what you have installed.
>
> It is clearly understood that should you be successful in having the Sherwoods agree to your roof design, then you both must obtain approval of the owners by a ¾ vote of approval at [a SGM] or [an AGM] as the roof you installed is a substantial change to what was approved November 17, 2012.
>
> Once you have all the required information as outlined in our June 21, 2013 letter as well as the letter of approval from Mr. and Mrs. Sherwood, we will assist you to move forward with the next steps to resolve your renovation issues to [the Sharp SL].

[151] The City posted a second Stop Work Order at the Sharp SL on July 4, 2013 ("July 2013 Stop Work Order"). The City advised that it did so to ensure that no further work was performed at the Sharp SL without a BP and the approval of the BA Strata Corporation for items within the scope of their authority.

[152] Later in July 2013, Ms. Sharp and the Sherwoods both engaged lawyers to deal with the BA Strata Corporation. The positions asserted were in conflict.

[153] The Sherwoods' lawyers, Kornfeld LLP, demanded in their July 12, 2013 letter that the BA Strata Corporation require Ms. Sharp to restore the roof to the Original Roof and remove the beam that is encroaching on the Sherwood SL. The Kornfeld LLP letter stated that the As-Built Sharp Roof was preventing the Sherwoods from building the "jointly planned, authorized, and permitted roof".

[154] The BASC held a meeting on July 16, 2013 ("BASC Meeting July 2013") with some members attending by teleconference. Among the items it considered was the July 12, 2013 letter from Kornfeld LLP. The minutes record the following resolution:

> … **BE IT RESOLVED** that further to our June 21, 2013 letter to [the Sharps], [Bayview] is authorized to write a letter on behalf of [BASC] putting the owners of [the Sharp SL] on notice that they are to:
>
> - dismantle all construction work done to the roof and bring the roof back to the [City] approved building plans prior to the plans being altered
> - remove that portion of the beam that is improperly located on [the Sherwood SL] and that the beam is supported according to [engineer's] recommendation.
>
> **AND THAT** further to the June 21, 2013 Bayview letter listing the [BASC's] requirements to address the [City] [July 2013 Stop Work Order], all repair work must be done between Monday, October 14, 2013 and Friday, November 1, 2013;
>
> **AND FURTHER** that [the BASC] will take any legal action required to resolve this issue at [the Sharp SL's] expense as per the signed [Sharp A&I Agreement] and Section 85 (1) of the [*SPA*].
> **CARRIED**
>
> Brian Moran cautioned [the BASC] not to interfere with the [City's] [July 2013 Stop Work Order] which sets 30 days for the Owners of [the Sharp SL] to correct any deficiencies.

[155] The Sharps' lawyers, Cox Taylor, sent Bayview a letter dated July 22, 2013 in response to Bayview's June 21, 2013 letter. This letter alleged that "there have been no significant changes to the plans presented at the AGM [2012]". It also included the following:

> 7. … it is [the Sharps'] position that a special resolution is not required and they will not be requesting the same. If the [BASC] is not prepared to provide the consent as requested by [the Sharps] we are instructed to petition the court for the same. The partial construction of [the Sharp SL] is unacceptable and is resulting in unnecessary cost and damage.
>
> 8. … [The Sharps] are [attempting] to resolve this matter in an amicable way. If the [BASC] is unwilling to continue discussion, as advised above we will have no other option but to commence legal proceedings against the [BA Strata Corporation].
>
> The amount of time the [BASC] has spent on this matter has been raised as a concern and we take exception to that comment. It is apparent that the [BASC] does not wish to resolve this matter and would prefer to appease the complaints raised by our [clients'] neighbour, Mr. Sherwood. It is clear that the [BASC] is not acting impartially. As such, we are hereby requesting that

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> the [BASC] review its position and confirm whether a resolution can be achieved. Our clients would like to avoid legal proceedings; however, at this time are unable to see any other way if the [BASC] is firm in its position.
>
> [The Sharps] have advised us that the [BASC] has taken the position that the [Sharp A&I Agreement] executed by our clients would protect them against any claim brought against the [BASC]. With respect, the [Sharp A&I Agreement] does not protect the [BASC] against wrongdoing by the [BASC] and would not protect the [BASC] in this instance.
>
> We understand that the [BASC] has everything it requires to respond to this request … and we await your reply. If we do not hear from you by July 31, 2013 we are instructed to petition to the Court without further prior notice to you.

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[156] The parties continued to correspond, with the Sharps essentially asserting that a One-Slope Roof Design was shown in the CGI and approved at AGM 2012, and the Sherwoods asserting that the AGM 2012 approved a Two-Slope Roof Design.

[157] The correspondence around this time included an email dated August 29, 2013 which Ms. Sharp sent to all owners in the BA Strata Corporation, which attached a letter setting out her position and stating that "[w]e feel the [BASC] and [Bayview] have treated us unfairly by refusing to provide us the opportunity to present our point of view to the whole [BASC]." The letter complained about the BASC meeting June 2013 being *in camera*, and the stipulation that the Sharps should not communicate with BASC members or Bayview about the renovations. The letter included the following:

> The reason the designer designed the [Two-Slope Roof Design] was that he could not think of a design that would conform to the AGM proposal, without raising the peak of the roof. The peak of the roof could not be changed, without triggering the need for a development permit. The designer's solution was the [Two-Slope Roof Design]. We were concerned with the difference between the [Two-Slope Roof Design] and what was presented at the AGM [2012], however we didn't have any alternative, so we presented the blueprints with the [Two-Slope Roof Design] to the [BASC] for final approval. [The BASC] gave their approval for this [Two-Slope Roof Design], which appears significantly different from the [One-Slope Roof Design] approved at the AGM [2012]. It is important to note that this approval was for the renovation of [the Sharp SL] only. [The Sherwood SL] had not presented their plan for approval at this point.

> Our builder then thought of a way to build the roof as shown at the AGM [2012], without raising the peak of the roof. This method has a number of benefits.
>
> - the pitch as built is steeper than the low pitch part of the [Two-Slope Roof Design], therefore has a 30 year warranty for the shingles (versus 12 years for the low pitch part of the [Two-Slope Roof Design])
> - it eliminates the possibility of leakage along the joint between the two slopes which could cause problems in determining responsibility between the [BA Strata Corporation] and the owner
> - both the [BA Strata Corporation] and the owner will save money on maintenance as there is a 30 year warranty for the owner and the [BA Strata Corporation] doesn't have to pay for maintenance of the entire beach side of the roof (win-win situation)
> - the ceiling is eight feet high throughout the front of the cottage
> - there is no exposed beam below the ceiling
> - it is structurally almost identical to the [Two-Slope Roof Design]
> - the cost is similar to the [Two-Slope Roof Design]
>
> Given all the benefits, we could not imagine that the [BASC] would have any objection to this minor structural change, which was in complete conformity with the proposal shown at the AGM. Also, the appearance as built fits in with the rest of the Resort. There are no other cottages throughout the Resort with a [Two-Slope Roof Design].
>
> The [BASC] has no legal right to withhold approval of the roof as built, as it conforms to the proposal that was approved by the [BA Strata Corporation] at the AGM.
>
> …
>
> The [BASC] has stated that our roof trespasses onto [the Sherwood SL]. The overhang was only built to prevent rainwater damage at the junction between the two roofs. It can be removed or modified in whatever way will suit the renovation of [the Sherwood SL]. We have no objection to whatever way [the Sherwood SL] would like to build their roof. …
>
> …
>
> [Underlining in original.]

[158] The BASC then also retained legal counsel. It retained Crease Harman LLP, which sent a letter dated September 18, 2013 to counsel for the Sherwoods and the Sharps. The letter asserted that the Sharp SL breached and was continuing to be in breach of BA 2003 Bylaw 5(1), because, among other things, the owner made alterations to common property, by alterations to the roof atop the Sharp SL, without obtaining the written approval of the BA Strata Corporation before making the

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alterations. The letter states that the BASC will settle the issue of the As-Built Sharp Roof by making a decision about whether the BA Strata Corporation should grant retroactive approval to what was built on the Sharp SL. The letter stated that all owners, including the Sharps and the Sherwoods, would be invited to the meeting and be given the opportunity to make submissions to the BASC.

L. October 2013 Including BASC Special Meeting October 2013

[159] The BASC meeting regarding the Sharp SL was scheduled for October 18, 2013 ("BASC Special Meeting October 2013") and all owners were sent an invitation letter a few weeks before that. The letter stated that "[the BASC] wants to bring this matter to a conclusion and will be evaluating all the information they receive before making their final decision."

[160] The BASC Special Meeting October 2013 proceeded as scheduled. Both the Sherwoods and Ms. Sharp made submissions both orally and in writing. The Sherwoods asserted that the Two-Slope Roof Design was approved at AGM 2012, and that they wished to construct such a roof on the Sherwood SL, so they asked the BASC to deny retroactive approval for the As-Built Sharp Roof. In contrast, the Sharps asserted that the One-Slope Roof Design was approved at the AGM 2012 and that the BASC should confirm that it approved the relevant plans.

[161] The minutes of the BASC Special Meeting October 2013 include the following:

> **7.1 Special [BASC] Meeting follow-up**
>
> **7.1.1 Decision on [the Sharp SL] Renovation**
>
> Further to the Oct 18, 2013 presentation by [the Sherwood SL and the Sharp SL] and owners [the BASC] discussed that [the Sherwood SL and the Sharp SL] submitted a plan with identical roof lines to the [City] in February, 2013. [BPs] were issued to both [the Sherwood SL and the Sharp SL] for identical roof lines. During construction [the Sharp SL] changed the roof line without the approval of [BASC] or the [City] which resulted in a stop work order. The [City] has stated that dissimilar roof lines could not be authorized without a Development Permit.

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> **MOVED** … that a letter be sent to [the Sharp SL] that [the BASC] does not approve the [As-Built Sharp Roof] as it is non-compliant;
>
> **AND THAT** [the BASC] reconfirms approval of the [City BP] dated February 20, 2013 signed by building official Stan Schopp;
>
> **AND FURTHER THAT** the respective engineers for [the Sherwood SL and the Sharp SL] must coordinate the design details, beam supports and foundation work so that both roofs align and submit appropriate drawings and information for [BASC's] review.
>
> **CARRIED**
>
> **7.1.2 [BASC's] approval of [the Sherwood SL] [City] approved plans and [BP]**
>
> **MOVED** … that a letter be written to [the Sherwood SL] that [BASC] approves the request to renovate [the Sherwood SL] and acknowledges that the owners have provided a copy of [the Sherwood February 2013 BP] and [City] approved building plans to [Bayview] for [BASC's] review;
>
> **AND THAT** as a condition of construction, the respective engineers for [the Sherwood SL and the Sharp SL] must coordinate the design details, beam supports and foundation work so that both roofs align and submit appropriate drawings and information for [BASC's] review.
>
> **CARRIED**

[162] Also on October 18, 2013, the City wrote Bayview about the roof lines for the Duplex. This letter stated that a development permit had not been required for the Sharp February 2013 BP and the Sherwood February 2013 BP, but would be required if the proposal were modified to include different roof lines for the two units. The letter includes the following:

> The [City's] position on this matter hasn't changed. Identical roof lines would be considered congruent with the existing development and two dissimilar roof lines would not be. A development permit and a valid [BP] would be required for dissimilar roof lines.

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[163] Bayview's letters dated October 30, 2013 informed the Sharps and the Sherwoods of the BASC decisions made at the BASC Special Meeting October 2013. The letter to the Sharps clearly states three important propositions which the BA Strata Corporation has consistently maintained since that meeting:

a) The As-Built Sharp Roof and the chimney enclosure were built without the prior written approval of the BA Strata Corporation and therefore, contravened BA 2003 Bylaws 4 and 5, and the Sharps must remedy the bylaw contravention by removing the not-approved alterations;

b) The BASC will not approve the as-built alterations which were not previously approved by the BA Strata Corporation; and

c) The BA Strata Corporation reiterated its approval of the plans previously approved by both the BA Strata Corporation and the City and attached to the Sharp February 2013 BP and the Sherwood February 2013 BP.

[164] Bayview's October 30, 2013 letter to the Sherwoods reiterated that the BA Strata Corporation approved the alterations depicted in the plans attached to the Sherwood February 2013 BP on conditions. The letter describes the conditions as follows:

> The conditions for the [BA Strata Corporation] approval are that you engage a structural engineer [concurrent] with the structural engineer engaged by the [Sharps] about the design details, beam supports and foundation work required for construction of the approved design so that the roof atop [the Sherwood SL] and atop [the Sharp SL] is similar and the drawings must be certified by your structural engineer and provided to the [BA Strata Corporation] for review, acknowledgement and approval.
>
> A further condition is that you sign the required indemnity agreement, a copy of which is attached, prior to your commencing any construction on the alterations to [the Sherwood SL] and the adjacent common property.

M. November 1, 2013 to January 31, 2014

[165] The BA Strata Corporation's 2013 AGM occurred about one month after the BASC Special Meeting October 2013. The Sharps did not ask for any resolution to be put before the owners for approval of either the As-Built Sharp Roof or the

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chimney enclosure. The new seven-member BASC was elected. The new BASC had three new members including Steve Stark, a now retired civil litigation lawyer.

[166] Shortly thereafter, Ms. Sharp sought and obtained permission from the BASC to decommission the chimney on the Sharp SL and to install an electric fireplace insert, removing another impediment to Ms. Sharp completing the Sharp SL renovation. The letter dated December 2, 2013 from Bayview to the Sharps granting this approval includes the following:

> I write further to advise you that you are to remove the non-compliant roof as well as the roof and wall addition that surrounds the chimney for [the Sharp SL] before January 30, 2014. As stated in our October 2013 letter to you, the [BA Strata Corporation] believes the alterations to [the Sharp SL] and the adjacent common property, made without prior written approval of the [BA Strata Corporation], are a contravention of [BA 2003 Bylaws 4 and 5]. …
>
> This letter is also putting you on notice that you will be receiving a demand for payment for the legal and administrative costs incurred to resolve the non-compliant issues related to your renovation.

[167] Meanwhile, Mr. Stark, the newly-elected BASC president, sought to become better informed about the issues regarding the Sharp SL.

[168] Mr. Stark spoke directly with both the Sherwoods and Ms. Sharp. He told Ms. Sharp that his personal preference was for the One-Slope Roof Design. However, he did not retract the demand that Ms. Sharp remove the not-approved alterations.

[169] Mr. Stark spoke to Ms. Sherwood on January 9, 2014. He asked her if she was willing to consider changing the design choice to a One-Slope Roof Design. However, he was clear that he was not willing to let his personal preference affect the dealings with Ms. Sharp.

[170] Ms. Sherwood told Mr. Stark that she was concerned about the structural issue referred to in the LEA May 2013 Opinion, and he said he would look into it.

[171] Mr. Stark's January 12, 2014 email to Ms. Sharp included the following:

> … I did speak to Roslyn Sherwood on Friday. Her position is unchanged. I do not anticipate [BASC] changing the position set out in our December 2, 2013 letter to you.

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[172] Mr. Stark's January 13, 2014 email to Mrs. Sherwood stated that his personal preference was immaterial to the Sherwoods' renovation.

[173] In an email sent around January 14, 2014 to the City, Ms. Sharp wrote that the Sharps "will take down the [As-Built Sharp Roof] and build it exactly as the building plans show", and she asked the City to remove the July 2013 Stop Work Order so she could do so.

[174] The City removed the July 2013 Stop Work Order on or about January 28, 2014. The City wrote Ms. Sharp a letter dated January 28, 2014, stating that the July 2013 Stop Work Order was being removed to facilitate "the reconfiguration of the 'as built' roof to conform with the roof configuration" on the February 2013 Plans, and "the removal of the enclosure around the chimney". The letter also states that the only work authorised to the interior of the Sharp SL was to place a footing for the concentrated beam loading located at the common wall end of the beam, under the supervision of Mr. Hudec, P. Eng.

[175] The January 30, 2014 deadline imposed by the BASC on the Sharps passed without the removal of the As-Built Sharp Roof.

N. February 2014

[176] Without explanation, Ms. Sharp changed her plans. In her email dated February 2, 2014 to Mr. Stark, she wrote as follows:

> Thank you for taking the time to look into the shed issue. As we have found in many instances in the past regarding our renovation, the information the [BASC] has been presented with is not complete or accurate. We are glad we are allowed to give input, as we were prevented from doing so previously. With [Mr. Moran's] lack of ability, and obvious bias against us, inaccurate information regarding our renovation has been provided to [BASC]. We think it will help to write to you and provide some information regarding our renovation which might help to come up with a positive resolution. Please forgive us for such a long email.
>
> … In terms of our renovation, Brian has been biased towards us from the beginning. The primary [BASC] meeting to discuss the problems with our renovation was held *in camera*. This prevented us from providing any input about our renovation, even though [the BASC] did not have sufficient or correct information upon which to make a decision. [The BASC] actually used

> the wrong version of the building plan at this meeting, not the final plans we submitted on Feb. 20, 2013. It was entirely Brian's fault that the wrong plans were reviewed. Subsequently, we were forbidden to contact any [BASC] or Bayview members regarding our renovation even though the decision in their June 23, 2013 letter made no sense. All these things happened under Brian's advice. The minutes of the [BASC Special Meeting October 2013] did not mention any of our arguments, making us look like mute fools. …
>
> The appearance of the roof we built was approved by the owners at [AGM 2012] and by the [BASC] immediately after the [AGM 2012]. …
>
> …
>
> We could not believe the [BASC] made a decision on Oct. 18, 2013 against what was approved by the owners (including the Sherwoods) at the [AGM 2012]. … Despite all of this, the [BASC] has voted to make us take down the brand new roof to conform with the flawed building plans, which in fact do not conform with the shape of roof approved by the owners and also previously approved by the [BASC]. …
>
> …
>
> We are always open for discussion and compromise. We hope the new [BASC] would reconsider their position to make a positive resolution. If you have any questions, please don't hesitate to give us a call. Open communication only makes problems resolve more smoothly.

[177] By Bayview's letter dated March 28, 2014 to the Sharps, the BASC repeated that it considered that the Two-Slope Roof Design was approved at the AGM 2012, and that the Sharps must remove the As-Built Sharp Roof. The letter stated that it would be up to the City whether the Sharps can now build a roof with a Two-Slope Roof Design or must return the roof to the design of the Original Roof.

[178] The BASC held a meeting on April 4, 2014 ("BASC Meeting April 2014") in which it made decisions described in the following letters.

O. April 2014 Imposition of Fines

[179] Bayview sent the Sharps two letters, both dated April 17, 2014. One letter included the following:

> As referenced in our letters of December 2, 2013 and March 28, 2014 you were to remove the non-compliant roof as well as the wall addition that surrounds the chimney for [the Sharp SL] by January 30, 2014.
>
> The [City] lifted the [July 2013 Stop Work Order] so you could accomplish this work. To date nothing has been done. You are currently in contravention of the following Beach Acres bylaws:

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[BA 2003 Bylaw 6(10)] – Alterations to the strata lot, [LCP] and/or common property

If an Alteration has been installed or constructed without approval from the [BASC], or contrary to a condition of approval or otherwise in violation of these Bylaws ("Unauthorized Alteration"), then the owner shall correct, remove and/or restore the property as directed by the [BASC] at the owner's sole expense, including legal costs as between a solicitor and his or her own client.

You are being put on notice that if the roof is not removed by April 30, 2014, as per [BA 2003 Bylaws 23 (3) and 24], [the BASC] will levy a fine in the amount of $200 every 7 days thereafter.

[BA 2003 Bylaw 23 (3)] – Fines

Subject to compliance with subsection (1), the [BASC] in addition to any other rights or remedies that it has available under law, may levy a fine in its sole and absolute discretion in an amount not to exceed a maximum of $200.00 for each contravention of a bylaw of the [BA Strata Corporation] and $50.00 for each contravention of a rule.

[BA 2003 Bylaw 24] – Continuing Contravention

If an activity or lack of activity that constitutes a contravention of a bylaw or rule continues, without interruption, for longer than 7 days, a fine may be imposed every 7 days.

[180] Bayview's other letter dated April 17, 2014 to the Sharps included the following:

I am writing in follow-up to the [BASC Meeting April 2014] where [BASC] again discussed their letters of December 12, 2013 and March 28, 2014 regarding the outstanding legal and administrative fees as a result of your renovations to [the Sharp SL].

As payment has not been received we will be enforcing Bylaw 6(13) and Bylaw 2(3).

I refer you to [BA 2003 Bylaw 6 (13)]

Any costs or expenses payable by an owner to the [BA Strata Corporation] pursuant to this Bylaw, including legal costs on a full indemnity basis, shall be added to and become part of the strata fees for that owner on the month next following the date on which the cost or expense was incurred and will become due and payable on the next due date of payment of monthly strata fees.

And [BA 2003 Bylaw 2 (3)]

The [BA Strata Corporation] may charge an owner who is late paying his or her strata fees (comprised of the monthly strata fee and any special levy) interest at the rate of 10% per annum, simple interest, compounded annually or the maximum rate of interest stipulated in the Regulations to the Act enacted from time to time, whichever is greater.

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> You are being put on notice that the legal and administration fees related to the renovation issues for [the Sharp SL] will be added to and become part of the strata fees and if the fees are not paid on or before April 25, 2014, a monthly interest rate of 10% will be applied to the outstanding accounts receivable balance starting May 1, 2014 as per [BA 2003 Bylaws 6 (13) and 2 (3)].

[181] Despite imposition of the fines, the Sharps did not remove the As-Built Sharp Roof.

P. May to August 2014

[182] Ms. Sherwood sent the BASC a copy of the LEA May 2013 Opinion by email dated May 2, 2014.

[183] By email dated May 9, 2014, Mr. Stark inquired of the City whether it would permit different roof lines if the BA Strata Corporation approved that, assuming the alteration costs for each unit were less than $50,000. Mr. Peters responded by email that the City would accept different roof lines that are approved by the BA Strata Corporation, assuming that the alteration costs for each unit are less than $50,000. This essentially confirmed that a development permit would not be required for such alterations.

[184] The Sherwoods sent a letter dated May 12, 2014 to the owners in response to the Sharps' letter dated April 21, 2014 described above. The Sherwoods repeated their view that the AGM 2012 approved a Two-Slope Roof Design with a "lip", and stated that other comments in the Sharps' letter were incorrect. The letter also included the following:

> After many months of not being able to build, due to [the Sharp SL's] actions, we pulled out. The [City] has since changed the ruling and we have decided to build. Our plan is to build the design that [the Sharp SL] and ourselves have [BPs] for.

[185] Mr. Stark sent a letter to the owners dated May 15, 2014, also in response to the Sharps letter of April 21, 2014. It states that the BASC's understanding "differs significantly from that detailed in [the Sharps'] letter." The letter refers to an electronic meeting of the BASC on May 12, 2014, at which the BASC confirmed its

position as set out in its October 30, 2013 letter to the Sharps, that the unauthorized alterations must be removed.

[186] Ms. Sherwood sent the BASC an email dated July 23, 2014, which included the following:

> We are once again asking when [the BASC] is going to rectify the structural integrity of our building. We sent the [City's] letter and the geo-tech report to Steve Stark in May 2014. Steve Stark and [the BASC] [have] not only ignored our requests to address the structural issue, [Mr. Stark] and [the BASC] have never given any response at all. We are concerned as to why this serious issue is being dismissed.

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[187] At its meeting in July 2014, the BASC resolved to retain Sorenson & Associates Engineering Ltd. ("Sorenson"), consulting structural engineers, to carry out a structural review of the Duplex. Mr. Heselgrave, acting chair of the BASC, sent the Sherwoods an email dated July 31, 2014, including the following:

> The [BASC] conducted a special [BASC] meeting yesterday and agreed to undertake a structural review of your cottage and [the Sharp SL] in its "as is" or present condition to determine whether there are any structural deficiencies that need to be addressed. If any, we will ask the structural engineer to make recommendations to address the structural concerns.
>
> We have had preliminary discussions [with] a qualified engineer from Nanaimo and will retain the engineer shortly. We can expect to receive a report on the matter within 30 days. Once we have retained the engineer we will update you regarding his requirements in undertaking the review.

[188] In mid-August 2014, both the Sharp February 2013 BP and the Sherwood February 2013 BP either expired or were cancelled.

[189] Ms. Sharp advised the BASC that the Sharps would retain their own engineers to assess the structural issues, and the BASC asked Sorenson to await that report.

[190] The BASC asked the City what work could be considered for approval on the Sharp SL because there was no BP in effect. Mr. Peters wrote a letter dated August 19, 2014 in which he stated that the City "would entertain all requests to accommodate work/repairs etc. required by a professional engineer that is deemed

to be required for [the Sharp SL] by an engineer in order to restore the structural integrity of the unit that would otherwise leave an unsafe condition."

[191] The BASC then decided to propose these two options concerning the roof to the owners:

a) the owners authorizing the BASC to settle the issues between the Sherwood SL, the Sharp SL, and the BA Strata Corporation on such terms that the BASC shall deem appropriate; and

b) the owners authorizing the BA Strata Corporation to proceed with legal action pursuant to *SPA*, s. 171.

[192] In other words, the BASC sought authority from the owners to make a mediated settlement, backed up with authority to sue. The BASC scheduled a SGM for September 13, 2014 ("SGM September 2014") for consideration of the two proposed resolutions.

Q. SGM September 2014 and Lawsuit

[193] Mr. Heselgrave sent the Sherwoods an email dated September 5, 2014, which included the following:

> Regarding the engineering report, technically we have not received a report. However, we have received some drawing with proposed changes to [the Sharp SL]. Further, we are in receipt of several e-mails referring to the matter. I have attached the information that we have received for your information. The conclusion that I have drawn from the attached is that there is no immediate life-safety issue. However, there "may" be a life-safety issue if there is a load on the [Sharp SL] roof this winter. Please note that this information is intended to be confidential as per the engineer's commentary in the attachments. Please refrain from sharing it for obvious reasons.
>
> I am in the process of securing additional information from the [Sharps] and their engineer on this matter in particular regarding the implications of a load on the roof. I hope to have this matter clarified next week and will inform you when it is clarified. We require a formal report from the engineer. Kevin [Mr. Peters] is prepared to deal with a permit to address a life-safety structural issue if one exists. To this point, we require the report including clarification on the roof loading issue.

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[194] The Sherwoods' lawyers, Kornfeld LLP, sent the BA Strata Corporation a letter dated September 8, 2014 asking that it immediately retain Sorenson in accordance with the July 30, 2014 resolution.

[195] At the SGM September 2014, the resolution regarding a mediated settlement was defeated, and the resolution authorizing a lawsuit was passed. The minutes of the SGM September 2014 include the following:

> 1.1 **Authorization for [BASC] to Settle Roofline Dispute**
>
> *The [BASC] has said that consistent rooflines are required and that was supported directly or indirectly when the members approved the renovation at the [AGM 2012].*
>
> *The [BASC] has taken a number of steps, unsuccessfully to this point, to have the unauthorized roofline on [the Sharp SL] removed. It is in the process of taking action to recover the monies that this issue has caused to be spent by the [BA Strata Corporation]. Further, the [BASC] would like the authority to resolve this matter in a way, as yet undetermined, that addresses the issues raised by the owners of [the Sherwood SL] and meets the requirements of the [City]. As well, the solution must be in keeping with the overall ambiance of Beach Acres in both the mid and long term. The [BASC] does not plan on spending unrecoverable funds in the resolution of this matter. Finally, this proposed resolution should provide the [BASC] with the flexibility to manage or resolve this long standing issue without the ongoing need for [SGMs] on the matter.*
>
> Barry Heselgrave stated that [the BASC] contemplated ways to resolve the issue that has gone on for 2 years and the motion is asking that owners approve that [the BASC] act in a reasonable manner according to the bylaws.
>
> **MOVED** … that **BE IT RESOLVED** by a ¾ vote that the [BA Strata Corporation] hereby authorizes [the BASC] to settle the dispute related to the alterations made by the owner of [the Sharp SL] on terms that [BASC] deems appropriate including settling issues that may currently exist between the [BA Strata Corporation] and the affected owners.
>
> Chair, Steve Stark invited questions and comments from the floor. The chair explained that [the BASC] had discussed mediation and explained binding arbitration.
>
> The following amendments were proposed to the Motion:
>
> **MOVED** … that the motion is amended to include that [the BASC] "acting reasonably" …..
>
> **CARRIED** ([Two] opposed)
>
> **MOVED** … that the motion be further amended to add "as long as no strata bylaws are contravened" …..
>
> **CARRIED** (3 opposed)

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MOVED by [the Sherwood SL] to amend the motion that [BASC] "enforces their Bylaws"
Disallowed

After much discussion the motion was read with amendments as follows:

MOVED … that **BE IT RESOLVED** by a ¾ vote that the [BA Strata Corporation] hereby authorizes [the BASC] to settle the dispute related to the alterations made by the owner of [the Sharp SL] on terms that currently exist between the [BA Strata Corporation] and the affected owners so long as no strata bylaws are contravened.
For the motion: 32
Against the motion: 19
FAILED

1.1 Authorization to Proceed with Legal Action

On October 18, 2013, [the BASC] passed a motion stating that [the BASC] does not approve the current "as built" roof on [the Sharp SL] as it is non-compliant. A motion was passed by [the BASC] on November 16, 2013 to send a letter advising [the Sharp SL] to rectify the non-conforming issues (the unapproved roof as well as the roof and wall addition that surrounds the chimney) to the Common Property by January 30, 2014. On December 2, 2013 this letter was sent on [the BASC's] behalf to the owners of [the Sharp SL].

[The BASC] has continued to make requests to [the Sharp SL] to rectify and dismantle the unapproved non-compliant roof and chimney wall enclosure and roof. The [City] has sent [the Sharp SL] letters, one on January 14, 2014 stating that the [BASC] requests reconstruction of the roof to match the [City BP] obtained by [the Sharp SL]; and on January 28, 2014 stating that the Stop Work Order had been lifted in order for [the Sharp SL] to reconfigure the roof and chimney enclosure and to place a footing for the beam supporting beam used. The [BPs] for both [the Sherwood SL and the Sharp SL] have now expired. Meanwhile, the unauthorized construction of [the Sharp SL] remains.

As there has been no action by [the Sharp SL] after continued requests by [the BASC] to dismantle and rectify the non-compliant issues, [the BASC] is seeking approval from owners to authorize the [BASC] to proceed with legal action to rectify this situation when [the BASC] determines such action is appropriate.

MOVED … that **BE IT RESOLVED** by a ¾ vote that the [BA Strata Corporation] hereby authorizes the [BASC] to proceed with legal action as per [*SPA*] Section 171, as a representative of all owners, except the owner of [the Sharp SL], in regard to the unapproved alterations made to [the Sharp SL].

CARRIED (4 opposed)

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[196] The SGM September 2014 was on a Saturday. The Monday which was one business day later, September 15, 2014, the Sherwoods commenced this proceeding.

R. November 2014 to Trial

[197] Sorenson provided Bayview with a letter dated October 20, 2014 ("Sorenson October 2014 Opinion") which included the following:

> [Sorensen] was retained to carry out a structural assessment of a renovation currently under way at the above property. A review of the site was carried out [by] Dan Fell, P. Eng on October 10, 2014 and was limited to the new construction.
>
> The renovation in question is basically a three foot addition to the water side of the building. This had been accomplished by the addition of a three ply 1-3/4"x16" LVL beam replacing the previous exterior load bearing wall. This beam supports joists for the addition on the exterior side and the existing roof trusses on the interior side. New framing has been added over the existing roof to match the slope of the new addition.
>
> There is concern relating to the support of this new beam at the existing party wall. The beam is currently supported on a four-ply built up post in the existing 2x3 wall which bears on the original exterior foundation. The factored reaction is approximately 8,700 lbs (specified reaction 6000 lbs) which requires a minimum six-ply 2x3 post. This work should be carried out prior to any snowfall.
>
> The existing foundation can most likely support the 6,000 lb specified load, based on the 2,000 psf bearing capacity given in the [LEA May 2013 Opinion]. However, it is understood that [the Sherwood SL] will be undergoing a similar renovation with the addition of a beam that will bear on the opposite side of the party wall. This will double the load on the foundation and will require the addition of a pad footing with a minimum area of six square feet. In the current state, the foundation bearing does not pose any immediate danger to either unit. The foundation work will be required prior to the renovation to [the Sherwood SL].
>
> A second area of concern is in regards to the framing of the piggy-back roof system. Where the new rafters are supported by the new LVL beam, they have been treated with a birdsmouth cut. The depth of material left after the cut is insufficient to support the roof loading. This deficiency can be easily rectified with the addition of joist hangers.
>
> [Underlining added.]

[198] The BASC obtained an email report from Herold Engineering in early November 2014 ("Herold Engineering November 2014 Report"). It includes the following:

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> The support provided by the existing ceiling joists does not appear to have been compromised. … The [As-Built Sharp Roof] poses a very low risk to [the Sherwood SL]. Upgrading of the post supporting the new beam or providing shoring should be addressed prior to snowfall.
>
> [Underlining added.]

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[199] By email dated November 6, 2014, Mr. Stark advised Ms. Sharp about the Herold Engineering November 2014 Report and asked for a detailed list of the work the Sharps wished to do. The Sharps responded with an email dated November 11, 2014, which repeats the view that the As-Built Sharp Roof had been approved at the AGM 2012, and describes work that the Sharps wished to do at that time.

[200] Mr. Stark responded with a November 13, 2014 email setting out that the BASC was prepared to advise the City that the BA Strata Corporation approves the issuance of a BP to do specific work, which was primarily temporary work in lieu of the footing.

[201] In November 2014, the BASC and Ms. Sharp reached agreement on the scope of work which would be covered by the new BP.

[202] Bayview sent the City a letter dated December 23, 2014, which states that the BA Strata Corporation is prepared to approve the issuance of a BP for the Sharp SL to do specific things, primarily addressing the support beam temporarily. This letter also states that "I wish to make it clear that the issuance of a [BP] to complete the specified work does not constitute approval of the [As-Built Sharp Roof].

[203] In December 2014, the BA Strata Corporation provided the City with a letter authorizing the agreed scope of work.

[204] In February 2015, the BA Strata Corporation endorsed its approval on Ms. Sharp's application for a BP.

[205] Bayview provided the City with a further letter dated March 10, 2015 clarifying the specific work on the Sharp SL that was acceptable to the BA Strata Corporation.

[206] The City issued a BP dated March 31, 2015 for the specified work.

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[207] In early June 2015, the City issued a new BP, which included the whole scope of work as agreed between the Sharps and the BA Strata Corporation. Thereafter, the chimney enclosure was removed from the Sharp SL and the remedial structural work was completed. There are no remaining concerns about the structural integrity of the Duplex.

[208] The Duplex was not affected by the delay in completion of the work.

[209] On July 2, 2015, the BA Strata Corporation sued Cinnabar in a lawsuit in the Victoria Registry ("Victoria Lawsuit"). In the Victoria Lawsuit, the BA Strata Corporation claims that Cinnabar contravened the relevant bylaws and is liable to pay the BA Strata Corporation fines, about $38,000 in respect of the BA Strata Corporation's actual costs of trying to enforce its bylaws, and special costs.

[210] In 2016, the Sherwoods stayed in the Sherwood SL for less than two weeks because of the unhappiness associated with the renovation dispute.

[211] Ms. Sharp estimated that the cost of removing the As-Built Sharp Roof and replacing it with the Two-Slope Roof described in the Sharp February 2013 BP would be $5,000 to $10,000.

[212] The Sharps refuse to remove the As-Built Sharp Roof.

V. ANALYSIS

A. What Did the BA Strata Corporation Approve at the AGM 2012?

[213] The position of the Sherwoods is that at the AGM 2012, the owners discussed and approved a roof with a lip, being a Two-Slope Roof Design.

[214] The position of the Sharps is that the One-Slope Roof Design was approved by the owners at the AGM 2012, because the CGI shows a One-Slope Roof Design.

[215] The BA Strata Corporation says that is all the owners approved at the AGM 2012 was the changing of about 34 square feet of LCP into habitable area for each of the strata lots by the relocating of the exterior wall on to the LCP. The BA Strata

Corporation describes this as an approval "in principle" or an approval of the "concept". As I understand it, the position of the BA Strata Corporation is that the AGM 2012 approved the October 2012 Joint Proposal generally, but left the details to be determined as the BASC saw fit.

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[216] In my view, the resolution as passed is determinative.

[217] As recorded in the minutes of the AGM 2012, the owners approved the renovation request, but on a conditional basis. I repeat the wording of the resolution for convenience here:

> **MOVED** … that **BE IT RESOLVED** by a ¾ vote that [the BA Strata Corporation] approves the request for renovations to [the Sherwood SL and the Sharp SL] subject to their signing [an A&I Agreement] and assuming the costs of any legal action associated with the renovation proposal.
>
> For the motion: 46
>
> Opposed: 5
>
> Abstention: 1
>
> **CARRIED**

[218] As set out in the resolution, the approval was subject to the Sharps and the Sherwoods entering into the A&I Agreement. The BASC and Cinnabar signed the Sharp A&I Agreement.

[219] As a result, I will discuss the important terms of the Sharp A&I Agreement which are relevant.

[220] It refers to Cinnabar applying to the BA Strata Corporation for approval for "Alterations … in accordance with the plans and specifications attached to and forming part of this Agreement (the "Alterations")".

[221] The executed Sharp A&I Agreement did not attach plans and specifications. However, the Sharp A&I Agreement is dated February 26, 2013. Ms. Sharp had sent a copy of the February 2013 Plans to Mr. Rushforth and Mr. Moran, and those plans are attached to the Sharp February 2013 BP. It is clear that the plans and

specifications referred to in the Sharp A&I Agreement are the February 2013 Plans, which show a Two-Slope Roof Design.

[222] The Sharp A&I Agreement provides in para. 1(a) that, in order to obtain the final written approval for the alterations, Cinnabar must obtain the "preliminary written approval from the [BASC] by providing … the proposed specifications … including the … appearance of the Alterations." Item 1(e) requires Cinnabar to cause all work to be done "in compliance with the British Columbia Building Code … and all other applicable laws".

[223] As a result, Cinnabar was required to cause the work to be done in compliance with the Sharp February 2013 BP. That required the work to be done "in accordance with the plans and specifications submitted and approved", which were the attached February 2013 Plans showing a Two-Slope Roof Design.

[224] This interpretation of the resolution at the AGM 2012 makes common sense. The owners at the meeting, and those voting by proxy, had the benefit of the general description of the renovation proposal in the Agenda Package AGM 2012. This included the CGI, which showed a similar roof over both the Sherwood SL and the Sharp SL, and a One-Slope Roof Design. If, in the judgment of the BASC, the final plans and specifications did not comply with the spirit of the approval at the AGM 2012, they could have demanded changes or required consideration at another SGM or AGM.

[225] In this case, the BASC delegated the further approval decision to Mr. Rushforth. While he did not recall discussion of a Two-Slope Roof Design at the AGM 2012, he must have believed that the appearance of the design described in the February 2013 Plans would be consistent with the resolution at the AGM 2012. Importantly, the plans and specifications that were provided to Mr. Rushforth, and attached to the relevant BPs, were the same for both the Sharps and the Sherwoods.

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[226] Ms. Sharp essentially argued that the owners are the ultimate decision-makers regarding BA Strata Corporation matters, and therefore, if they approved the CGI showing the One-Slope Roof Design, Cinnabar had obtained the written approval it required for the As-Built Sharp Roof.

[227] The flaw in this reasoning is that the resolution specified that the approval was "subject to signing … [A&I Agreement]". As a result, the resolution essentially imported the requirement that the renovations comply with the Sharp February 2013 BP, and thereby required compliance with the February 2013 Plans.

[228] The *SPA*, the Regulations, and the BA 2003 Bylaws, all set out what is the role of the owners and the BASC. The power of the owners is in their ability to elect members to the BASC, and to vote on resolutions, some of which require unanimity, some a ¾ vote, and some a simple majority. It is not correct that the combined effect is that the owners have the power to approve a proposal in its entirety by reviewing an item like the CGI.

[229] There was a great deal of evidence at trial about what was said at the AGM 2012, and the evidence differed.

[230] In my view, it is not necessary for the purposes of this case to determine what was said at the AGM 2012, if anything, about the proposed roof design, because the wording of the resolution is determinative.

[231] Again, this accords with common sense. Pursuant to s. 25(3) of the *SPA*, owners must be given at least two weeks' written notice of an AGM, which includes the proposed wording of any resolution requiring a ¾ vote. The owners voting by proxy have notice of that resolution. The purpose of a written resolution is so that it will be determinative.

[232] If I am wrong, and it is necessary to determine whether anything was said about the proposed roof at the AGM 2012, it is my conclusion that there was some discussion of a Two-Slope Roof Design through discussion of a "lip".

[233] The court must make such a determination on the basis of what is most probable in light of all the evidence.

[234] Some witnesses, including Mr. Rushforth and Ms. Sharp, testified that they did not recall any discussion of a “lip” or a Two-Slope Roof Design. Of course, they may have been distracted or focussed on something else or out of the room during such discussions.

[235] Ms. Stoneage’s duties on the day of the AGM 2012 were to prepare the initial draft of the minutes. She recalls attending the less formal meeting during the break, which I have termed the AGM 2012 Break Meeting. She testified that a question was raised about what was going to happen to the roof, and that Mr. Sherwood answered that the issue involved about three feet, and there would be a lip about 10’ in size which would go over top and would not touch the existing roof.

[236] Others also testified about discussions of the “lip”.

[237] I also considered the email correspondence in advance of the AGM 2012, particularly in the days prior to it. This shows that the Sharps and the Sherwoods were giving thought to the roof design. They corresponded about a possible gable. Ms. Sherwood wrote “[i]f you want to put in a bay window without a gable over it the only way is to change the pitch of the roof and make it higher on the beach side.” Ms. Sharp wrote about raising the roof, either to fit in a bay window or just to push out the sliding door. These discussions are consistent with the concept of a “lip” in a Two-Slope Roof Design.

[238] I also considered the lengthy correspondence between the relevant parties following the AGM 2012.

[239] Ms. Sharp used the February 2013 Plans for the Sharp February 2013 BP and provided them to the BASC. Those plans include a Two-Slope Roof Design. This suggests that Ms. Sharp believed that such a roof was in compliance with the discussion at the AGM 2012.

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[240] In all the circumstances, I conclude that the owners approved the renovation proposal subject to an executed A&I Agreement, effectively making it subject to BASC approval. I also conclude that there was discussion at the AGM 2012 Break Meeting that the October 2012 Joint Proposal would include a Two-Slope Roof Design.

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B. What, if anything, did the BASC approve?

[241] As set out above, the resolution at the SCM November 2012 was as follows:

> 4.2 **Approval of Renovations for [the Sherwood SL and the Sharp SL]**
>
> **MOVED** … that Bayview writes a letter of approval to [the Sherwood SL and the Sharp SL] for their renovation requests subject to the review of building plans and [A&I Agreement] by Andrew Rushforth on behalf of [the BASC].
>
> **CARRIED**

[242] As set out above, BA 2003 Bylaw 19 permits the BASC to delegate some or all of its powers to a member of the BASC. That Bylaw sets out some limitations on what can be delegated, but none of them apply here.

[243] As a result, it was acceptable for the BASC to delegate to Mr. Rushforth the task of reviewing the building plans and the Sharp A&I Agreement. The concept of reviewing “on behalf of” the BASC suggests that the review would be for the purpose of determining the acceptability of the building plans and the Sharp A&I Agreement.

[244] Mr. Rushforth received the February 2013 Plans from Ms. Sharp, and the Sharp February 2013 BP attaching the February 2013 Plans from Mr. Moran.

[245] Mr. Rushforth responded with his February 26, 2013 email to Mr. Moran, which stated “I think everything is in order”. If Mr. Rushforth considered that the February 2013 Plans would result in a change to the appearance of the Duplex which had not been approved by the owners at the AGM 2012, he would presumably have raised the issue with someone, likely the BASC. He did not do so. He either thought the roof design was consistent with what had been discussed at the AGM 2012, or that the change to the appearance was not important.

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[246] Mr. Rushforth's email was followed by Bayview's letter to the Sharps dated February 26, 2013, which included the following:

> This letter is to confirm approval of your renovation request for [the Sharp SL] subject to you signing [an A&I Agreement] and returning it to [Bayview].

[247] As stated, the Sharp A&I Agreement imports the requirement to comply with the Sharp February 2013 BP, which attaches the February 2013 Plans.

[248] The result is that by Bayview's letter dated February 26, 2013, the BASC approved the February 2013 Plans, on the terms set out in the Sharp A&I Agreement.

C. Was the structure on the Sharp SL built in accordance with the approvals by the BASC and the BA Strata Corporation?

[249] It can be difficult for someone who does not work in the construction field to know whether a change from plans and specifications is a significant change.

[250] The City clearly considered that the construction on the Sharp SL was not in accordance with the Sharp February 2013 BP, because it issued Stop Work Orders.

[251] Ms. Sharp and Mr. Redfern appear to have recognized that there were changes from the February 2013 Plans, but thought that they were sufficiently minor that handwritten amendments to the plans would be acceptable to the City and the BASC.

[252] In my view, the photographs and drawings demonstrate that the As-Built Sharp Roof is not in accordance with the February 2013 Plans or the Sharp February 2013 BP. The As-Built Sharp Roof is a One-Slope Roof Design, while the approved plans and the BP show a Two-Slope Roof Design.

[253] It appears that over time, the changes to the roof design emerged as being increasingly significant. The City's April 2013 Stop Work Order was discussed in Mr. Schopp's emails of April 12, 2013 and April 16, 2013. The roof was not discussed as a major concern, although there were references to expansion of construction onto common property, which might refer not only to the storage shed but also the roof. It

was not until Mr. Schopp's April 30, 2013 email that he clearly raised a concern about the roof slope, and he refers to concerns about the certification of shingles and the venting of the raised roof section.

[254] However, even if it took the City and others some time to become concerned about the roof design, in my view, the change from the Two-Slope Roof Design which is in the February 2013 Plans and the Sharp February 2013 BP, to a One-Slope Roof as in the As-Built Sharp Roof was a significant change.

[255] It is apparent from the photographs that the beachside of the Duplex will look different depending on whether there is a One-Slope Roof Design or a Two-Slope Roof Design.

[256] That is also apparent from examining the handwritten changes Mr. Redfern made to the February 2013 Plans. On page 4, he has indicated venting and a new beam.

[257] As a result, I conclude that the As-Built Sharp Roof was not built in accordance with the approvals of the BASC and the BA Strata Corporation, because it does not comply with the roof design set out in the Sharp February 2013 BP which is referred to in the Sharp A&I Agreement.

D. Did the BA Strata Corporation treat the Sherwoods significantly unfairly, permitting a remedy under s. 164 of the *SPA*?

1. Case Law

[258] Any claim that the acts or omissions of a strata council amount to a significantly unfair action in relation to an owner raises the question of the deference due to the decisions made by a strata council. A typical expression of this deference is found in *The Owners Condominium Plan 7722911 v. Marnel,* 2008 ABQB 195, at para. 18:

> [18] In the latter case, a Justice of this Court set aside a decision of a Master who had found that a corporation's board had acted improperly in determining common expenses. The Justice concluded at paragraph 54, after reviewing the numerous cases referred to in his judgment, that "... a Court

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> should defer to elected Boards as a matter of general application" and "... should not lightly interfere in the decision of the democratically elected board of directors, acting within its jurisdiction and substitute its opinion about the propriety of the board of directors' opinion unless the board's decision is clearly oppressive, unreasonable and contrary to legislation". Rather, it is only "if improper conduct is alleged and a Court is satisfied that improper conduct has taken place, the Court, pursuant to Section 6(7) of the Condominium Act, may then direct and/ or grant any of the remedies set out therein".

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[259] *Dollan v. The Owners, Strata Plan BCS 1589,* 2012 BCCA 44 [*Dollan*], demonstrates the limits on the deference due in B.C. In *Dollan*, the marketing materials relied upon by the owners of a strata lot described the units as having 'vision glass' for the window in question, but the affected units were completed with spandrel opaque glass. The spandrel opaque type of glass impairs the view out the window. The spandrel glass deprived the affected owners of a view of False Creek and prevented them from having a view into other units in the strata corporation. Those other units had vision glass, and as a result, they had a view of the affected owners' unit.

[260] The affected owners applied to the strata corporation for permission to install vision glass. The strata corporation considered that the request engaged s. 71 of the *SPA*, and the request was presented to the owners at an SGM. The resolution did not pass: 19 voted in favour and 54 voted against, and 45 of the owners voted by proxy.

[261] The affected owners challenged the vote as being significantly unfair. Both the B.C. Supreme Court chambers judge and the Court of Appeal agreed that the vote denying permission to the affected owners to install vision glass was significantly unfair.

[262] The Court of Appeal provided three separate reasons for judgment, with Garson J.A. delivering the longest judgment. Hall J.A. concurred with Garson J.A. in the result, and noted this case was a rare instance of where the court can second guess the strata council. D. Smith J.A. dissented.

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[263] The deference issue was discussed by Garson J.A. in paras. 18, 19, and 21-26, as follows:

> [18] This appeal raises two issues about the proper interpretation of s. 164. First, the appropriate degree of deference owed to a decision of a strata council, or in this case, the Strata Corporation, and second, the meaning of the phrase “significantly unfair”.
>
> [19] Several trial level judgments have been cited to us as authority for the proposition that on an application under s. 164 (or its counter-part in other provincial jurisdictions), courts should grant considerable deference to decisions reached democratically by either the council or the corporation. The appellant urges on this Court an approach that is focussed on the fairness of the process rather than the outcome.
>
> …
>
> [21] The appellant contends that the focus of the analysis is on the conduct of the Strata Corporation. In *Peace v. Strata Plan VIS 2165*, 2009 BCSC 1791, 3 B.C.L.R. (5th) 188 at para. 55, Sewell J. focused on the process undertaken by the Strata Corporation and not the result:
>
>> [55] I have already referred to the wording of section 164 of the *SPA*. I repeat that the focus of that section is on the conduct of the Strata Corporation and not on the consequences of the conduct. There is no doubt that in making a decision the Strata Corporation must give consideration of the consequences of that decision. However, in my view, if the decision is made in good faith and on reasonable grounds, there is little room for a finding of significant unfairness merely because the decision adversely affects some owners to the benefit of others. This must be particularly so when the consequence complained of is one which is mandated by the *SPA* itself.
>
> [22] In *Gentis v. Owners, Strata Plan VR368,* 2003 BCSC 120, prior to filing a s. 164 petition regarding the Strata Council’s resolution that they could not continue to rent part of the common property to use as a deck, the petitioners sought to obtain such a lease through a special resolution of the Strata Corporation. Masuhara J. considered if the outcome of the Strata Corporation’s vote was dispositive of the question of whether the Strata Council’s action was significantly unfair. At para. 34, he held that the vote was not dispositive but the fact that the special resolution was soundly defeated was “additional evidence in support of the position that the Council’s decision represented the interests of the majority of the Strata owners” and, in turn, is relevant in determining whether or not the action was significantly unfair.
>
> [23] The appellants, particularly relying on *Peace*, say that the chambers judge erred by failing to afford the appropriate deference to the democratic and fair process which lead to the decision to refuse permission to replace the windows. As noted earlier, the appellants say that the process, rather than the outcome, should be the focus of the court’s scrutiny.

[24] Section 164 is remedial. It addresses that, despite using a fair process and holding a democratic vote, the outcome of majoritarian decision-making processes may yield results that are significantly unfair to the interests of minority owners. Section 164 provides a remedy to an owner who has been treated significantly unfairly by co-owners or the strata council that represents them. The view that significantly unfair decisions reached through a fair process are insulated from judicial intervention would rob the section of any meaningful purpose. I agree with what Masuhara J. said in *Gentis* that the outcome of the vote is one factor to be considered in determining if the impugned action is unfair. I do not agree with the suggestion in *Pearce* that provided the process is fair and democratic, a court should defer to the decision of the strata council or corporation.

[25] I now turn to the question of the meaning of the phrase "significantly unfair".

[26] As noted by the respondents, the language in s. 164 bears some resemblance to s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57, which concerns oppression remedies. The jurisprudence considering the oppression remedy has informed the interpretation of s. 164. In *Reid v. The Owners, Strata Plan LMS 2503*, 2001 BCSC 1578, Sinclair Prowse J. ascribed a meaning to the phrase "significantly unfair" consistent with the test for oppressive conduct in a shareholder's oppression application. She held at paras. 11 – 14:

> [11] In this hearing, Counsel for both parties submitted that the meaning of "significantly unfair" would, at the very least, encompass oppressive conduct and unfairly prejudicial conduct or resolutions. I agree.
>
> [12] In the case of *Blue-Red Holdings Ltd v. Strata Plan VR 857* (1994), 42 R.P.R. (2d) 49 (B.C.S.C.), the court reviewed all of the definitions that had been given to these terms. Specifically, oppressive conduct has been interpreted to mean conduct that is burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith. "Unfairly prejudicial" conduct has been interpreted to mean conduct that is unjust and inequitable.
>
> [13] Therefore the issue in this case is whether the Resolution has been burdensome, harsh, wrongful, lacking in probity or fair dealing, has been done in bad faith, and/or has been unjust and inequitable.
>
> [14] For reasons which follow, I have concluded that the Resolution is not burdensome, harsh, wrongful, lacking in probity or fair dealing, done in bad faith, and/or unjust and inequitable. In other words, the evidence did not establish that the Resolution was "significantly unfair" to Mr. Reid.

[Underlining added.]

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[264] Mr. Justice Hall discussed the deference issue at paras. 41 and 43-46 as follows:

> [41] I have had the advantage of reading in draft the reasons of Garson J.A. and D. Smith J.A. I am doubtful that the trial judge was adopting an appropriate analysis in this case when she made reference to a decision that would ensure the greatest happiness of the greatest number of owners of strata units. In fact, it is not entirely clear to me just what was the precise reasoning that persuaded her to a conclusion in favour of the respondents.
>
> …
>
> [43] I start from the proposition very cogently set forth in the reasons of my colleague D. Smith J.A. that courts should be very hesitant in interfering with the decisions of a Strata Council. That is the form of government utilized by strata lot owners to govern their affairs and, assuming a fair process (of which there is no issue here), courts should, in my view, adopt an attitude of considerable deference to such decisions. If it was a question of process and procedure only, I would certainly not be inclined to interfere with the decision made by the Strata Council in this case.
>
> [44] I do not, however, consider that in the unusual circumstances of the present case, that we can properly limit our consideration solely to the practice and procedure adopted by the Council. If such were to be the only consideration in a case raising such an issue as the present one, a court would have no ability to look beyond a majority supported decision to take account of the position of one or more parties in a minority. I might consider it an appropriate approach to a matter like the present controversy to adopt something of a presumption of regularity about a decision of a strata council supported by a majority of owners but to afford some limited ability in a court to address a decision that imposes a too heavy burden on a minority. That is rather how I see the present case.
>
> [45] As outlined in her reasons by my colleague Garson J.A., I consider that the decision of the appellant Council cast too heavy a burden on the respondents in this disputed issue. In terms of previous authorities, it could be characterized as "unduly burdensome" and therefore fairly capable of being within the purview of the language of the statute "significantly unfair". Perhaps, without express articulation, that was the unexpressed major premise underpinning the conclusion of the judge at first instance.
>
> [46] I see the continuing burden of an impaired view as being a disproportionate imposition on the interests of the respondents. Therefore, this is what I view as a rare instance where a court can legitimately second guess the views of a strata council. The substantive issue here rises to a level of significance sufficient to engage the statutory basis to override the decision of the Council. Thus, perhaps based on a somewhat different mode of analysis than that articulated by Loo J. or by Garson J.A., I concur in the disposition of this appeal as proposed in her reasons by Garson J.A.
>
> [Underlining added.]

[265] The test for significant unfairness was recently alluded to by the Court of Appeal in *Radcliffe v. The Owners, Strata Plan KAS1436,* 2015 BCCA 448 [*Radcliffe*]. The Court of Appeal considered s. 164 of the *SPA* from the perspective of whether a remedy of reimbursement of expenses was available under the section. For the Court, Savage J.A. referred to the test for significant unfairness at paras. 39-41:

> [39] The scope of s. 164 of the *Act* has been considered by this Court, most recently in *Dollan v. The Owners, Strata Plan BCS 1569*, 2012 BCCA 44. In *Dollan*, in considering the meaning of "significantly unfair", Garson J.A. endorsed the description in *Reid v. The Owners, Strata Plan LMS 2503*, 2001 BCSC 1578, that something more than "mere prejudice" or "trifling unfairness" was required to invoke the section.
>
> [40] Garson J.A. applied a two-part test borrowed from corporate oppression jurisprudence that considered (1) does the evidence objectively support the reasonable expectations of the strata unit owner seeking redress, and (2) does the evidence establish that the reasonable expectations of the strata unit owner was violated by action that was significantly unfair.
>
> [41] Without endorsing the two-part test, Hall J.A., found that conduct "unduly burdensome" fell within the purview of the statute as "significantly unfair". Smith J.A., was disinclined to adopt the two-part test, which she noted was developed in a very different factual and legal commercial context. She opined that the plain and ordinary meaning of the term "significantly unfair" might be less complex than the test which appears to have evolved.

[266] As a result, the test in British Columbia for "significant unfairness" under s. 164 of the *SPA* remains the test in *Reid v. Strata Plan LMS 2503,* 2001 BCSC 1578. In *Gentis v. The Owners, Strata Plan VR368,* 2003 BCSC 120, Masuhara J. confirmed this test, and supplemented it by a recognition that the impugned actions or threatened actions must rise above mere prejudice or trifling unfairness. Paragraphs 27-29 are as follows:

> [27] The scope of significant unfairness has been recently considered by this Court in ***Strata Plan VR 1767* v. *Seven Estate Ltd.*** (2002), 49 R.P.R. (3d) 156 (B.C.S.C.), 2002 BCSC 381. In that case, Martinson J. stated (at para. 47):
>
> > The meaning of the words "significantly unfair" would at the very least encompass oppressive conduct and unfairly prejudicial conduct or resolutions. Oppressive conduct has been interpreted to mean conduct that is burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith. "Unfairly prejudicial conduct" has been interpreted to

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> mean conduct that is unjust and inequitable: ***Reid v. Strata Plan LMS 2503***, [2001] B.C.J. No. 2377.
>
> [28] I would add to this definition only by noting that I understand the use of the word 'significantly' to modify unfair in the following manner. Strata Corporations must often utilize discretion in making decisions which affect various owners or tenants. At times, the Corporation's duty to act in the best interests of all owners is in conflict with the interests of a particular owner, or group of owners. Consequently, the modifying term indicates that court should only interfere with the use of this discretion if it is exercised oppressively, as defined above, or in a fashion that transcends beyond mere prejudice or trifling unfairness.
>
> [29] I am supported in this interpretation by the common usage of the word significant, which is defined as "of great importance or consequence": ***The Canadian Oxford Dictionary*** (Toronto: Oxford University Press, 1998) at 1349.
>
> [Underlining added.]

2. Discussion

[267] The Sherwoods argue that the BA Strata Corporation did not act sufficiently quickly and aggressively to force Cinnabar to build a roof with a Two-Slope Roof Design, and to force Cinnabar to correct structural issues with the Sharp SL which arose in October 2014. The Sherwoods also argued that the BA Strata Corporation acted significantly unfairly in denying Mr. Sherwood's proposed amendment at the SGM September 2014.

[268] The BA Strata Corporation's submissions characterize Cinnabar's failure to build a Two-Slope Roof as a contravention of the BA 2003 Bylaws.

[269] As discussed above, the As-Built Sharp Roof does not comply with the Sharp A&I Agreement. In addition, since I have concluded that it does not comply with the approval by the BA Strata Corporation, it contravenes BA 2003 Bylaws 4 and 5.

a) Roof Issues

[270] The facts relating to the non-compliant As-Built Sharp Roof are:

a) The owners, including the BASC members, reside varying distances from Beach Acres;

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b) The first in-person BASC meeting after the April 2013 Stop Work Order was the BASC Meeting June 2013. As discussed above, the concerns about the roof did not emerge immediately. It is fair to say that the BA Strata Corporation first became aware of the scope of the contravention in June 2013;

c) At the BASC Meeting June 2013, the BASC concluded that the Sharps had made alterations which were not approved and would not be approved by the BASC;

d) In July 2013, both the Sherwoods and the Sharps retained legal counsel, who then made opposing demands on the BA Strata Corporation;

e) The BASC engaged legal counsel and afterwards decided to hold a BASC meeting to decide whether the Sharp SL alterations as built would be approved by the BA Strata Corporation;

f) The BASC held the BASC Special Meeting October 2013, at which they received both written and oral submissions from both the Sharps and the Sherwoods. The BA Strata Corporation concluded that Cinnabar contravened the BA 2003 Bylaws by constructing the unapproved alterations and that dissimilar rooflines would not be permitted on the Duplex. Bayview's October 30, 2013 letter demanded the Sharps to remove the unapproved alterations, although it did not specify a date by which that should be done;

g) At the AGM 2013 in November 2013, the owners elected a new BASC. On December 2, 2013, the BA Strata Corporation demanded that the Sharps remedy the bylaw contravention by January 30, 2014, being a date about seven weeks later;

h) Meanwhile, Mr. Stark, who was a qualified mediator, was communicating with both the Sharps and the Sherwoods. Ms. Sharp appeared to be working to make the demanded changes by the January 30, 2014 deadline, because she

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sought permission from the City to take down the As-Built Sharp Roof and build it exactly as the February 2013 BPs showed;

i) The As-Built Sharp Roof was not removed by January 30, 2014, and in fact remains in place;

j) After the January 30, 2014 deadline passed, the Sherwoods withdrew their BP application;

k) On February 2, 2014, Ms. Sharp wrote Mr. Stark asking the BASC to reconsider its position. By letter of March 28, 2014, the BA Strata Corporation continued to demand that the Sharps remove the As-Built Sharp Roof;

l) In April 2014, the BA Strata Corporation began imposing fines on the Sharp SL. It put Ms. Sharp on notice that the BA Strata Corporation intended to look to Cinnabar for all the costs incurred by the BA Strata Corporation as a result of the unapproved alterations;

m) During the spring and summer of 2014, Mr. Stark continued his efforts to seek a resolution through settlement. Mr. Stark had concerns about the potential significant legal costs and still hoped to avoid burdening the BA Strata Corporation with what he could foresee would be significant costs;

n) The BASC next sought owners' approval for two resolutions regarding the As-Built Sharp Roof, first, to authorize the BASC to make a mediated settlement, and second, to authorize the BA Strata Corporation to commence legal proceedings. At the SGM on September 13, 2014, the former resolution was defeated, but the latter resolution was passed;

o) The SGM September 2014 was held on a Saturday. On the following Monday, the very next business day, the Sherwoods commenced this proceeding.

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[271] The remedies available to the BA Strata Corporation when an owner breaches bylaws are described in the *SPA*, ss. 129 and 133, as follows:

> **Enforcement options**
>
> **129** (1) To enforce a bylaw or rule the strata corporation may do one or more of the following:
>
> > (a) impose a fine under section 130;
> >
> > (b) remedy a contravention under section 133;
> >
> > (c) deny access to a recreational facility under section 134.
>
> (2) Before enforcing a bylaw or rule the strata corporation may give a person a warning or may give the person time to comply with the bylaw or rule.
>
> …
>
> **Strata corporation may remedy a contravention**
>
> **133** (1) The strata corporation may do what is reasonably necessary to remedy a contravention of its bylaws or rules, including
>
> > (a) doing work on or to a strata lot, the common property or common assets, and,
> >
> > (b) removing objects from the common property or common assets.
>
> (2) The strata corporation may require that the reasonable costs of remedying the contravention be paid by the person who may be fined for the contravention under section 130.

[272] Litigation is expensive. Starting a lawsuit to enforce the bylaws requires a ¾ vote of the owners:

> **Strata corporation may sue as representative of all owners**
>
> **171** (1) The strata corporation may sue as representative of all owners, except any who are being sued, about any matter affecting the strata corporation, including any of the following matters:
>
> > (a) the interpretation or application of this Act, the regulations, the bylaws or the rules;
> >
> > (b) the common property or common assets;
> >
> > (c) the use or enjoyment of a strata lot;
> >
> > (d) money owing, including money owing as a fine, under this Act, the bylaws or the rules.
>
> (2) Before the strata corporation sues under this section, the suit must be authorized by a resolution passed by a 3/4 vote at an annual or special general meeting.
>
> …

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[273] The Sherwoods argued that the BA Strata Corporation could have acted under s. 133 by removing the offending As-Built Sharp Roof in early 2013.

[274] The BA Strata Corporation argued as follows:

a) Imposing fines before the January 30, 2014 deadline passed would not have made any difference, except to increase the amount of fines presently owing to the BA Strata Corporation;

b) Commencing a lawsuit against Cinnabar to recover fines earlier would not have changed what occurred, since the commencement of the Victoria Lawsuit in July 2015 has not caused Cinnabar to remove the As-Built Sharp Roof. More likely, the lawsuit to recover the fines would still await the outcome of this proceeding;

c) the problems with the BA Strata Corporation removing the As-Built Sharp Roof itself are that:

   i) Ms. Sharp had obtained approval for most of the constructed alterations to the Sharp SL and the related common property. In order to restore the As-Built Sharp Roof to the Original Roof, the relocated wall would need to be restored to its original position. If the BA Strata Corporation acted to relocate the original wall, the Sharps could argue that the BA Strata Corporation was not acting fairly by removing both unapproved and approved alterations;

   ii) if the BA Strata Corporation removed the As-Built Sharp Roof and replaced it with the design in the February 2013 Plans, the height of the ceiling would likely be reduced, contrary to the wishes of the Sharps;

   iii) in all these circumstances, it would have been perilous for the BA Strata Corporation to remove the offending structure, without a court

order authorizing it to do so. It might have made the BA Strata Corporation liable to Cinnabar for trespass; and

iv) if the BA Strata Corporation had attempted to remove the offending structure without a court order authorizing it to do so, it is likely that the Sharps would have sought and obtained an injunction which would have preserved the *status quo* until a hearing or trial.

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[275] The BA Strata Corporation argued that its decision of how best to enforce the bylaws is a discretionary decision by the BASC. The BASC was moving purposively to enforce the bylaws. The decision about how and in what circumstances to enforce which remedies against an owner, for bylaw contravention, are to be made by the BASC. Even the owners cannot interfere with the BASC's exercise of the duty and responsibility to enforce bylaws (see *SPA*, s. 27).

[276] The BA Strata Corporation argued that the Sherwoods have not demonstrated the response of the BA Strata Corporation to Cinnabar's bylaw contravention was burdensome, harsh, wrongful, lacking in probity or fair dealing or done with bad faith.

[277] The BASC Meeting June 2013 was when the BASC first met in person after the April 2013 Stop Work Order. The period from then until the SGM September 2014, when the owners approved the commencement of a lawsuit to enforce the BA 2003 Bylaws, was 15 months. The BA Strata Corporation argued that this is not a very long period of time to reach a point when the owners will be willing to commit to the expense of litigation.

[278] The main factor favouring the conclusion that the BA Strata Corporation did not act quickly enough in dealing with the roof issues is that by the time of trial, the matter had been unresolved for a period of over four years, from the April 2013 Stop Work Order until the trial commencing in June 2017.

[279] However, the following factors suggest that the BA Strata Corporation acted sufficiently quickly in dealing with the roof issues:

a) this was a complex issue, on which there was significant disagreement about the relevant facts and the application of the law, and which involved multiple parties, being the Sharps, the Sherwoods, the BA Strata Corporation, and the City;

b) the procedure of initially demanding compliance, followed by levying fines, followed by seeking approval of the owners to commence legal proceedings, is appropriate, and such a procedure often leads to an amicable resolution without significant legal expense; and

c) it was appropriate for the BA Strata Corporation to seek an agreed solution, both to save legal expense for all parties, and to attempt to promote good ongoing relationships between the parties.

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[280] I agree with the submission of the BA Strata Corporation that, once the Sherwoods had commenced this litigation, it was reasonable for it to await the outcome of the litigation. I also agree that, if the BA Strata Corporation had sought to itself remove the As-Built Sharp Roof, it is likely that the Sharps would have sought and obtained a court order preventing it from doing so and preserving the *status quo* until the issue had been resolved by the court.

[281] This is not a case in which a strata council has ignored the concerns of an owner, or treated the Sherwoods differently from other owners. It is a case which it was reasonable for the BA Strata Corporation to try and resolve the matter through discussion, then imposition of fines, and then within this litigation. Of course it is unfortunate that the matter was not resolved sooner, but it was not significantly unfair for the BA Strata Corporation to take the steps it did to try to resolve it without either performing construction work or commencing litigation before the Sherwoods did so.

[282] The pace of the actions by the BA Strata Corporation was not so slow that it was harsh, wrongful, lacking in probity or fair dealing, and its choices were not made in bad faith. While it had a far greater impact on the Sherwoods than other owners in

the BA Strata Corporation, the time taken was more of an exercise of judgment in how quickly and aggressively to react to the Sharps' conduct than a choice to treat the Sherwoods unfairly.

b) Structural Issues

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[283] The Sherwoods' other complaint of significant unfairness relates to the BA Strata Corporation's response to structural issues, in 2014.

[284] The issue of a structural concern was raised by the LEA May 2013 Opinion. The Sherwoods asked the BASC to investigate in January and July 2014. The BASC's investigation concluded on October 20, 2014, when the BA Strata Corporation received the Sorensen October 2014 Opinion. The structural issues had been demonstrated not to present a life safety issue. The Sorensen letter stated the size of the post supporting the new beam needed to be increased before the renovation of the Sherwood SL. The letter stated, "This work should be carried out prior to any snowfall."

[285] The BA Strata Corporation, jointly with Ms. Sharp, proceeded to seek a BP which would permit the work to increase the post strength, other remedial work necessary to preserve the Sharp SL, and the removal of the chimney enclosure, all the while permitting Ms. Sharp to obtain the approved shed. This BP was not obtained until summer 2015, whereupon the remedial work was performed. No ill consequences were suffered by the Duplex as a result of the delay.

[286] The BA Strata Corporation argued that the Sherwoods have not proven the actions of the BA Strata Corporation, concerning the structural remedial work, were burdensome, harsh, wrongful, lacking in fair dealing or done with bad faith. To the contrary, the BA Strata Corporation says it acted purposively and deliberately to address the structural concerns. It also argues that, because there were no consequences as a result of the alleged delay, any unfairness perceived by the Sherwoods was not "significant".

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[287] As stated in *Dollan,* at para. 27, citing Ryan J.A. in *Reid v. Strata Plan LMS 2503*, 2003 BCCA 126:

> I agree with Masuhara J. that the common usage of the word "significant" indicates that a court should not interfere with the actions of a strata council unless the actions result in something more than mere prejudice or trifling unfairness. This analysis accords with one of the goals of the Legislature in rewriting the *Condominium Act*, which was to put the legislation in "plain language" and make it easier to use (British Columbia, *Official Report of Debates of the Legislative Assembly,* Vol. 12 (1998) at 10379). I also note that the term "unfair" is defined in the *Canadian Oxford Dictionary* as "not just, reasonable or objective"...

[288] The Sherwoods do not claim that delaying the installation of the reinforcing post to June 2015 caused any damage to the structure of the Duplex or had any consequences for the Sherwood SL. The Sherwoods' complaint is that Mrs. Sherwood experienced upset as a result of the delay.

[289] It would have been better if the structural work had been completed earlier. However, much of the delay was during the winter months, when the Sherwood SL was not generally used.

[290] I am not persuaded that the BA Strata Corporation's conduct regarding the structural issues rose to the level of "significant unfairness".

[291] The Sherwoods' claim against the BA Strata Corporation seeking a remedy under s. 164 of the *SPA* for being treated with significant unfairness is dismissed.

c) Amendment Proposed at SGM September 2014

[292] The Sherwoods complain that it was significantly unfair that Mr. Stark disallowed Mr. Sherwood's proposed amendment to the resolution at the SGM September 2014.

[293] Mr. Stark testified that he disallowed the proposed amendment because, in his opinion, it significantly altered the resolution. Essentially, he suggested that a negotiation should be able to consider all options, not only those considered to enforce the bylaws. *SPA* s. 50(2) is as follows:

> **Voting at annual or special general meetings**
>
> **50** …
>
> (2) Despite section 45 (3), during an annual or special general meeting amendments may be made to the proposed wording of a resolution requiring a 3/4 vote if the amendments
>
> > (a) do not substantially change the resolution, and
> >
> > (b) are approved by a 3/4 vote before the vote on the resolution.

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[294] I agree with Mr. Stark's analysis. The amendment proposed by Mr. Sherwood would have significantly changed the resolution. This is of particular concern when many owners were appearing by proxy.

[295] Mr. Stark's decision to disallow Mr. Sherwood's proposed amendment was made in good faith. It was not significantly unfair to the Sherwoods.

E. Did the BA Strata Corporation treat the Sharps significantly unfairly, permitting a remedy under s. 164 of the *SPA*?

[296] Ms. Sharp had three main complaints about the conduct of the BA Strata Corporation: first, that it was enforcing the bylaws more rigorously against Cinnabar than against two other owners; second, that it failed to meet with her when she requested it; and third, that the bylaws were being enforced against Cinnabar without a complaint.

1. Other Owners

a) Starks

[297] Ms. Sharp referred to the installation of a bathroom skylight by the Starks, arguing that the BA Strata Corporation treated the Starks differently.

[298] However, there are important differences between the situation regarding the Sharp SL and the work on the Stark unit. The City issued stop work orders regarding the work on the Sharp SL, but did not do so regarding the Stark unit. The work on the Sharp SL did not comply with the approval by the BA Strata Corporation or the Sharp A&I Agreement or the Sharp February 2013 BP, while the work on the Stark unit was not shown to differ from the relevant approvals.

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[299] Cinnabar has not established that the Starks contravened any bylaw of the BA Strata Corporation. Therefore, the Stark bathroom renovation process does not suggest that the BA Strata Corporation is selectively enforcing the bylaws against the Sharps.

b) Sherwoods

[300] Ms. Sharp also complained that the Sherwoods were treated differently in respect of their installation of a shed about 20 years ago. Again, in contrast to the situation with the Sharp SL, the evidence did not show that the Sherwoods' work was contrary to a BP or an A&I Agreement.

[301] Cinnabar has not established that the Sherwoods' shed contravened any bylaw of the BA Strata Corporation. Therefore, the existence of their shed does not suggest that the BA Strata Corporation is selectively enforcing the bylaws against Cinnabar.

2. Delayed Meeting

[302] Ms. Sharp argued that, despite requesting a hearing by the BASC, she was deprived of that opportunity for six months. Ms. Sharp identified her email dated May 24, 2013, as being the request for a meeting. Ms. Sharp referred to *SPA,* s. 34.1 which is as follows:

> **34.1** (1) By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.
>
> (2) If a hearing is requested under subsection (1), the council must hold a council meeting to hear the applicant within 4 weeks after the request.

> (3) If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week after the hearing.

[303] Ms. Sharp points to the subject line of her May 24, 2013 email, which reads, "... Unit #14 Request for Strata Council Meeting".

[304] Ms. Sharp's May 24, 2013 email was addressed to the BASC. It seemed to be in response to Mr. Cutt's email of May 9, 2013, which included the following:

> We are in full agreement with you that the only way to resolve all remaining issues is to have a meeting of all parties concerned -- including [Bayview], [BASC], [the City], and your neighbour in [the Sherwood SL] as soon as possible. However, we also agree that a pre-condition of a productive meeting is that all parties have all the necessary documentation. It follows that you should respond to the documentation requirements listed in Stan Schopp's email of April 30, … and deliver that response to [Bayview] prior to any meeting. When [BASC] has received and reviewed the documentation, Brian will then arrange the meeting of all parties at the earliest opportunity.
>
> [Underlining added.]

[305] The body of Ms. Sharp's May 24, 2013 email refers to enclosing various requested documents, and refers to bringing an original plan to "the meeting". The enclosed letter is lengthy but does not make a request for a meeting. It ends with "[w]e would like to listen to any suggestions and advice the [BASC] provides."

[306] Following this email, the BASC held the BASC Meeting June 2013, including an *in camera* discussion. The BASC's conclusions in that *in camera* meeting include the conclusion that the As-Built Sharp Roof had not been approved, and there would be no further discussion until an AGM or a SGM.

[307] In the months that followed, the Sharps and the Sherwoods engaged lawyers. The Sharps' lawyers' letter dated July 22, 2013 does not request or demand a meeting with the BASC. It requests consent for the As-Built Sharp Roof, and refers to petitioning the court if the consent is not received.

[308] The BASC held the BASC Special Meeting October 2013, and at that time considered the Sharps' oral and written submissions, as well as the Sherwoods'.

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[309] The BA Strata Corporation argued Ms. Sharp has not demonstrated compliance with *SPA,* s. 34.1 and, therefore, Ms. Sharp was not deprived of the required hearing.

[310] Ms. Sharp's position is that her email of May 24, 2013 requests a meeting with the BASC, and the BASC did not hear the Sharps' oral submissions until about five months later, on October 18, 2013, at the BASC Special Meeting October 2013.

[311] In my view, the May 24, 2013 email did not clearly request a meeting with the BASC. The words of the reference line could be interpreted to refer to the meeting which had been discussed in the prior correspondence. In order to rely on s. 34.1 of the *SPA*, an owner ought to make a clear request for a meeting.

[312] The question remains whether the BASC's decision at its BASC Meeting June 2013 not to discuss the roof issue further until after an AGM or a SGM, and the delay until October 2013 of the opportunity to further address the BASC, was significantly unfair to the Sharps.

[313] The Sharps set out their position in the lengthy letter attached to the May 24, 2013 email. Their lawyers wrote on their behalf in July 2013. The BASC heard the Sharps orally on October 18, 2013.

[314] Ms. Sharp testified that she was upset by not having the opportunity to address the BASC before the October 18, 2013 meeting. However, even after hearing the Sharps' submissions, the BASC did not change its views, which are in fact consistent with my conclusions.

[315] It may have been better if the BASC had permitted the Sharps to make oral submissions earlier. However, I am not persuaded that the delay of five months in hearing the Sharps' oral submissions was significantly unfair in all the circumstances, including the factual complexity and the numerous parties involved.

[316] Both the Sharps and the Sherwoods made their oral submissions at the same time. The decision at the BASC Meeting June 2013 was that there would be "no

further discussion" of the matter, and that applied equally to the Sharps and the Sherwoods. This was not a case of the BASC choosing to hear only one side of the story. The volume of correspondence demonstrates provides some explanation for the BASC seeking to ensure that discussion of the work at the Sharp SL included all the necessary information and people.

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3. Absence of Complaint

[317] Ms. Sharp argued that the bylaws were being wrongfully enforced against Cinnabar, even though there is no record of a "complaint" about the bylaw contraventions.

[318] This submission appears to relate to s. 135 of the *SPA*, which is as follows:

> **Complaint, right to answer and notice of decision**
>
> **135** (1) The strata corporation must not
>
> (a) impose a fine against a person,
>
> (b) require a person to pay the costs of remedying a contravention, or
>
> (c) deny a person the use of a recreational facility
>
> for a contravention of a bylaw or rule unless the strata corporation has
>
> (d) received a complaint about the contravention,
>
> (e) given the owner or tenant the particulars of the complaint, in writing, and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant, and
>
> (f) if the person is a tenant, given notice of the complaint to the person's landlord and to the owner.
>
> (2) The strata corporation must, as soon as feasible, give notice in writing of a decision on a matter referred to in subsection (1) (a), (b) or (c) to the persons referred to in subsection (1) (e) and (f).
>
> (3) Once a strata corporation has complied with this section in respect of a contravention of a bylaw or rule, it may impose a fine or other penalty for a continuing contravention of that bylaw or rule without further compliance with this section.

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[319] As I understand it, Ms. Sharp argued that the BA 2003 Bylaws ought not to be enforced against Cinnabar unless the BA Strata Corporation has received a complaint. This confuses whether a bylaw has been contravened with the requirement for a complaint to be received before the BA Strata Corporation imposes a fine.

[320] In *The Owners, Strata Plan VR19 v. Collins et al.,* 2004 BCSC 1743 [*Collins*], a strata corporation sought a declaration that an owner contravened a bylaw by installing laminate flooring despite the strata corporation stipulating carpeting. Melnick J. concluded the bylaw was enforceable, by court remedy, even though the strata corporation had not received a formal or identifiable complaint. Paragraph 11 of *Collins* is as follows:

> [11] In order to enforce a bylaw, it must be shown that the bylaw has been contravened. The Flooring Bylaw in the present case simply states that certain flooring is required in the strata lots on the second and third stories. A contravention of the Flooring Bylaw does not *only* result upon noise emanating from a strata lot. Rather, the simple fact that the flooring in SL 22 is not in accordance with the Flooring Bylaw is a plain and obvious contravention of that bylaw. Thus, since the Flooring Bylaw has been contravened, the Strata Corporation is entitled to enforce it.

[321] In this lawsuit, the BA Strata Corporation does not seek payment of the fines or claim the costs of the BA Strata Corporation. Those claims are the subject of the Victoria Lawsuit, and should be addressed there.

[322] For the purposes of the Sharps' complaint that they were treated significantly unfairly, there is a sufficient record of complaints being made by the BASC members and by the Sherwoods to permit the BA Strata Corporation to have taken the steps it did.

[323] Cinnabar's claim against the BA Strata Corporation seeking a remedy under s. 164 of the *SPA* for being treated with significant unfairness is dismissed.

F. If the BA Strata Corporation treated either the Sherwoods or the Sharps significantly unfairly, what is the appropriate remedy?

[324] The BA Strata Corporation has not acted significantly unfairly to either the Sherwoods or the Sharps. As a result, it is not necessary to consider an appropriate remedy.

G. If the structure on the Sharp SL was not built in accordance with the approvals by the BA Strata Corporation and the BASC, what is the appropriate remedy?

[325] The position of the Sherwoods is that the BA Strata Corporation should be ordered to remove the As-Built Sharp Roof and to construct the Two-Slope Roof which had been approved by the City and the BA Strata Corporation. In the alternative, the Sherwoods seek an order that Cinnabar be required to take those steps.

[326] The position of the BA Strata Corporation is that Cinnabar should be ordered to complete the approved renovations by a stipulated date, and that only if Cinnabar fails to do so by a specific time should the court order the BA Strata Corporation to do the renovation work.

[327] The *SPA* provides as follows at ss. 165 and 173:

> **Other court remedies**
>
> **165** On application of an owner … of a strata lot or interested person, the Supreme Court may do one or more of the following:
>
> (a) order the strata corporation to perform a duty it is required to perform under this Act, the bylaws or the rules;
>
> (b) order the strata corporation to stop contravening this Act, the regulations, the bylaws or the rules;
>
> (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).
>
> …
>
> **Other court remedies**
>
> **173** (1) On application by the strata corporation, the Supreme Court may do one or more of the following:
>
> (a) order an owner … to perform a duty he or she is required to perform under this Act, the bylaws or the rules;

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> (b) order an owner … to stop contravening this Act, the regulations, the bylaws or the rules;
>
> (c) make any other orders it considers necessary to give effect to an order under paragraph (a) or (b).
>
> (2) If, under section 108 (2) (a),
>
> (a) a resolution is proposed to approve a special levy to raise money for the maintenance or repair of common property or common assets that is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise, and
>
> (b) the number of votes cast in favour of the resolution is more than 1/2 of the votes cast on the resolution but less than the 3/4 vote required under section 108 (2) (a),
>
> the strata corporation may apply to the Supreme Court, on such notice as the court may require, for an order under subsection (4) of this section.
>
> (2.1) Section 171 (2) does not apply to an application under subsection (2).
>
> (3) An application under subsection (2) must be made within 90 days after the vote referred to in that subsection.
>
> (4) On an application under subsection (2), the court may make an order approving the resolution and, in that event, the strata corporation may proceed as if the resolution had been passed under section 108 (2) (a).

[328] The question of remedy is complicated by the need to comply with the City's requirements for a BP. The City is not a party to this lawsuit, and there is not presently a valid BP for changes to the Sharp SL. The court can only order parties to this lawsuit to take steps that are in their power.

[329] Construction is notoriously subject to minor changes and alterations. In this case, the real issue between the parties was whether Cinnabar had the necessary approval at the relevant time to build a One-Slope Roof Design. I have concluded that it did not.

[330] Ms. Sharp argued that the As-Built Sharp Roof should remain. Her submissions suggested that a One-Slope Roof Design is a preferable design, because it permits a higher ceiling in the kitchen, and because the cost of rebuilding would be wasted.

[331] The flaw in that argument is that it is not for Ms. Sharp or the court to determine what is the best roof design. In this case, the Two-Slope Roof Design was

approved through the execution of the Sharp A&I Agreement, which required compliance with the Sharp February 2013 BP.

[332] While the BA Strata Corporation could have chosen to approve the As-Built Sharp Roof, it has not done so. It was and is entitled to insist that owners comply strictly with the terms of an A&I Agreement. Insisting on such compliance may provide a deterrent to other owners from performing work which has not been approved as required.

[333] Another complication in this case is the fact that the construction in question relates to a duplex, and the Sherwoods and the Sharps intended to build at different times and using different workers. The City's BP process apparently requires separate BPs for separate units, and provides permission for building rather than requiring building.

[334] The BA Strata Corporation has a legitimate concern to avoid two different styles of roof on the Duplex. It is therefore troubling to order it to build a Two-Slope Roof Design on the Sharp SL.

[335] Hopefully, this Court's determination that the BA Strata Corporation has not approved a One-Slope Roof Design will enable the parties to make reasonable agreements for the future.

[336] These reasons for judgment have concluded that the As-Built Sharp Roof does not comply with the approval granted by the BA Strata Corporation. As a result, the Sherwoods are entitled to an order requiring the Sharps to correct the As-Built Sharp Roof, and if the Sharps fail to do so in a reasonable time, the BA Strata Corporation must do so.

[337] One would hope that the Sherwoods and the Sharps will both agree with the BA Strata Corporation to seek a BP for the February 2013 Plans, and to build according to that BP within a specific time period, with the BA Strata Corporation agreeing to permit the construction even if it must take place in the summer season.

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[338] The matter is further complicated if the Sherwoods no longer wish to renovate the Sherwood SL. The two sides of the Duplex will look different because only the Sharp SL will enclose the additional part of the patio.

[339] The parties should have a reasonable opportunity following the release of these reasons for judgment to enter into an agreement which will result in removal of the As-Built Sharp Roof and the construction of a roof which is the same over both sides of the Duplex.

[340] If the parties have not reached such an agreement within 60 days following the release of these reasons for judgment, the BA Strata Corporation is required to take all reasonable steps to obtain the necessary BP to remove the As-Built Sharp Roof and replace it with a roof similar to the Original Roof. The BA Strata Corporation must seek a BP within the following 30 days, and must construct in accordance with it within 90 days after receiving such a BP.

[341] The parties have liberty to apply for any orders necessary to permit the work to be completed as soon as possible. I retired as a judge of this court effective August 31, 2017, and so further court applications should be set before another judge.

H. Did the Sharps Act Negligently in Altering the Sharp SL?

[342] The requirements to establish negligence here are as follows:

a) that Cinnabar owed a duty of care to the Sherwoods;

b) that Cinnabar breached that duty of care, in that it failed to meet the standard of care required of a reasonably prudent person in the circumstances;

c) that the Sherwoods suffered damages; and

d) that Cinnabar caused the Sherwoods' damages.

[343] Cinnabar and the Sherwoods were neighbours in the Duplex. As such, Cinnabar owed a duty of care to the Sherwoods.

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[344] A reasonably prudent person would not construct a roof which failed to comply with a BP. Cinnabar breached that duty.

[345] The Sherwoods claim damages on the basis of being upset by the state of the Sharp SL renovations. However, there was no evidence that they incurred expenses, such as for renting alternate accommodation, or any other financial loss.

[346] The Supreme Court of Canada recently discussed the requirements for a legally compensable injury in *Saadati v. Moorhead*, 2017 SCC 28. They concluded that this requires a disturbance which is serious and prolonged and rises above the ordinary annoyances, anxieties, and fears that come with living in a civil society.

[347] The Sherwoods have not established a mental injury of that degree. Accordingly, they have not established their claim in negligence.

I. If the Sharps Acted Negligently in Altering the Sharp SL, What is the Appropriate Remedy?

[348] I have concluded that the Sherwoods have not established that the Sharps are liable to them for negligence. As a result, it is not necessary to consider what would be the appropriate remedy for negligence.

J. Costs

[349] Ordinarily, a successful party is entitled to an order that the unsuccessful party pays them costs. Such costs are usually assessed by the registrar under Appendix B to the *Supreme Court Civil Rules*. Matters of ordinary difficulty, such as this case, are assessed using Scale B.

[350] The order the Sherwoods achieved against the BA Strata Corporation is essentially the order suggested by the BA Strata Corporation, and requires the Sharps to remove the As-Built Sharp Roof. The responsibility of the BA Strata Corporation to remove the roof arises only if the Sharps fail to do so in a timely way. The Sherwoods failed against the Sharps in their claim for negligence.

[351] The Sherwoods sought an order that the BA Strata Corporation should pay them any portion of the legal costs charged to them as part of their strata fees.

[352] The BA Strata Corporation argued that there was no evidence that any legal costs of the BA Strata Corporation have been paid by the Sherwoods.

[353] I agree. That claim of the Sherwoods is dismissed.

[354] The BA Strata Corporation does not claim costs from Cinnabar in this proceeding. The BA Strata Corporation’s claim for those costs, on a full indemnity basis, is the subject of the Victoria Lawsuit, and must be dealt with there.

[355] The BA Strata Corporation conceded that it was a necessary party to this lawsuit, and that once the Sherwoods started this proceeding, both the BA Strata Corporation and the Sharps were necessary parties.

[356] The BA Strata Corporation argued that if the court made the orders proposed by the BA Strata Corporation, then the Sherwoods have succeeded against Cinnabar and have not succeeded against the BA Strata Corporation.

[357] In these circumstances the BA Strata Corporation argued that Cinnabar should pay to the Sherwoods the costs which the Sherwoods would otherwise be required to pay to the BA Strata Corporation. Such an order is often referred to as a “Bullock” order. Essentially, it would provide that the Sherwoods should pay costs to the BA Strata Corporation because the order made is what the BA Strata Corporation proposed, but that Cinnabar should pay that amount to the Sherwoods because it is Cinnabar’s conduct which gave rise to the Sherwoods’ claim against the BA Strata Corporation.

[358] The Bullock order is described in Rule 14-1(18) of the *Supreme Court Civil Rules*, as follows:

> **Costs of one defendant payable by another**
>
> (18) If the costs of one defendant against a plaintiff ought to be paid by another defendant, the court may order payment to be made by one defendant to the other directly, or may order the plaintiff to pay the costs of

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> the successful defendant and allow the plaintiff to include those costs as a disbursement in the costs payable to the plaintiff by the unsuccessful defendant.

[359] The BA Strata Corporation argued that, from the beginning of this action, the BA Strata Corporation has concurred with the order for Cinnabar to remove the unapproved alterations. The BA Strata Corporation submits a Bullock order which permits a successful plaintiff to add to the costs recoverable from the unsuccessful defendant the amount of costs which the plaintiff might otherwise be obliged to pay to the successful defendant.

[360] I agree. In this case, the problems all arose from Cinnabar's construction of the As-Built Sharp Roof, which does not comply with the Sharp February 2013 BP or the approvals by the BA Strata Corporation.

[361] As a result, Cinnabar is required to pay the Sherwoods their costs of this lawsuit. The Sherwoods are required to pay the BA Strata Corporation its costs of this lawsuit, but the Sherwoods are entitled to include in their claim for costs from Cinnabar, as a disbursement, the costs payable by them to the BA Strata Corporation.

VI. SUMMARY

[362] In summary, the order is as follows:

a) the claims of the Sherwoods and the Sharps against the BA Strata Corporation alleging that its conduct was significantly unfair to them are dismissed;

b) the Sherwoods' claim against the Sharps for negligence is dismissed;

c) if the parties have not, within 60 days of the release of these reasons for judgment, entered into an agreement which will result in removal of the As-Built Sharp Roof and the construction of a roof which is the same over both sides of the Duplex, the BA Strata Corporation is required to take all reasonable steps to remove the As-Built Sharp Roof and replace it with a roof

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similar to the Original Roof, and "reasonable steps" will include the requirement that the BA Strata Corporation must seek a BP within 90 days of the release of these reasons for judgment, and must construct in accordance with it within 90 days after receiving such BP; and

d) Cinnabar is required to pay the Sherwoods their costs of this lawsuit. The Sherwoods are required to pay the BA Strata Corporation its costs of this lawsuit, but the Sherwoods are entitled to include in their claim for costs from Cinnabar, as a disbursement, the costs payable by them to the BA Strata Corporation.

"V. Gray, J."

Gray J.

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APPENDIX A

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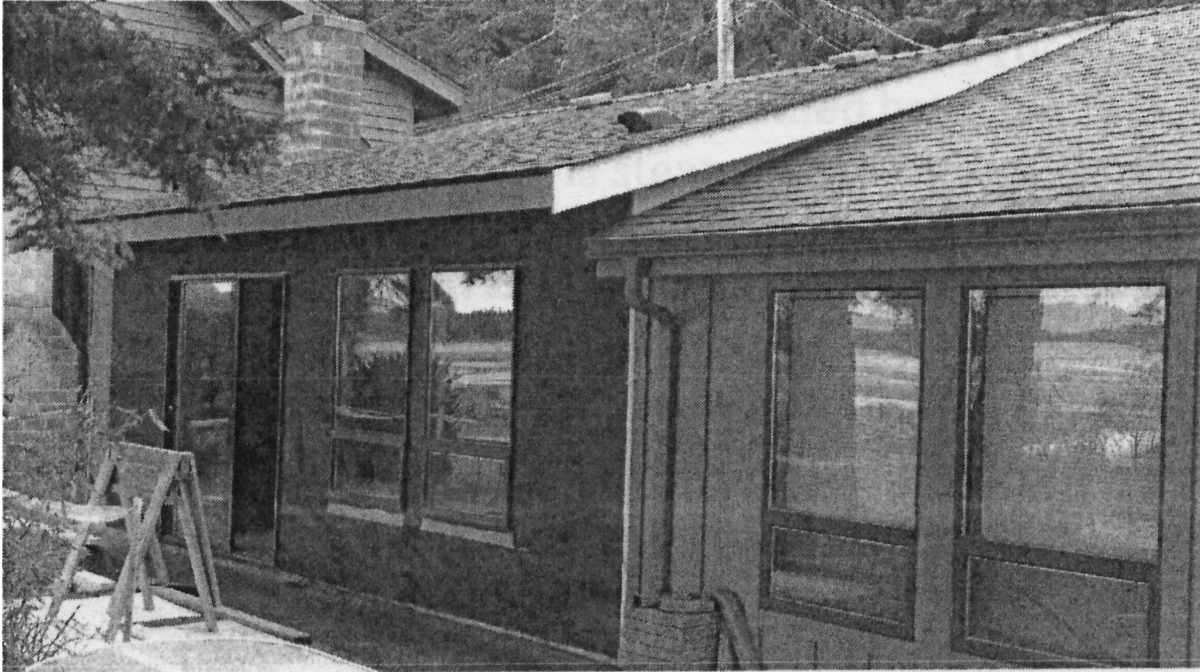
APPENDIX B



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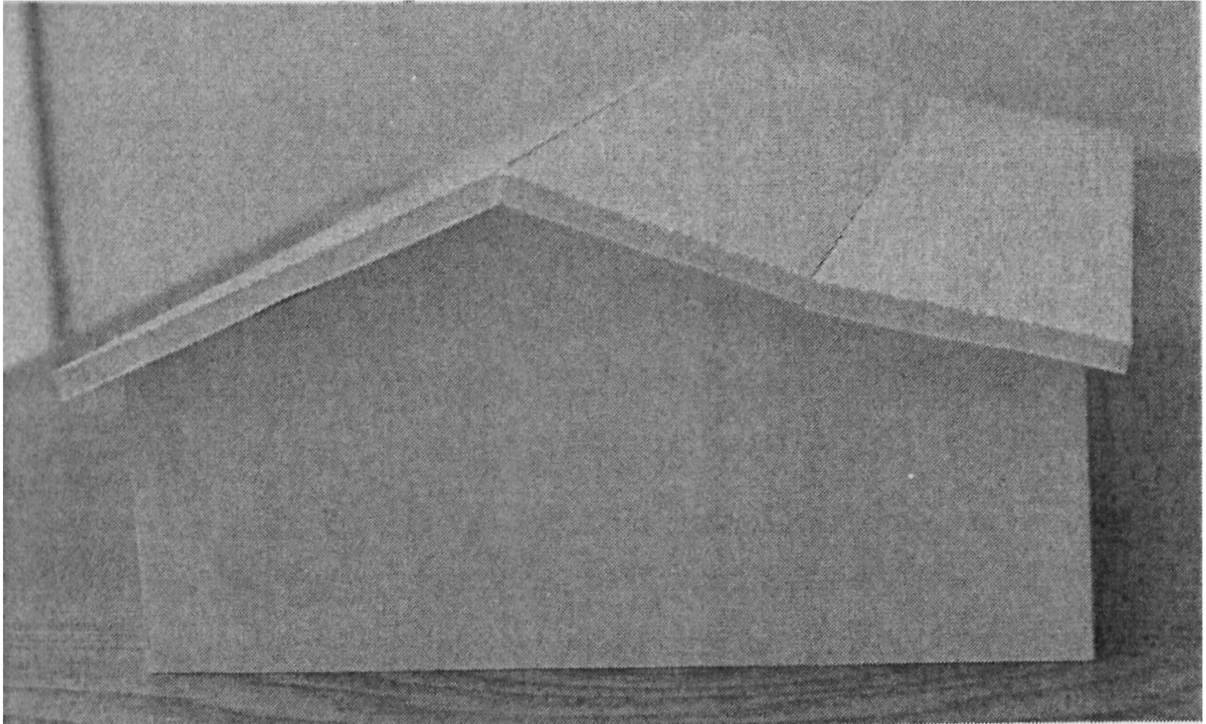
APPENDIX C



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APPENDIX D

Subject: Renovation proposal Unit 13 & Unit 14
Date: Tuesday, 23 October, 2012 8:58:30 PM Pacific Daylight Time
From: Li Sharp
To: Brian Moran

Dear Strata Members,

We, the owners of unit #13 & #14, would like to present our renovation proposal to the AGM for approval.

Here is an outline of the plan we have for renovating Unit #13 and Unit #14. The main thing we would like to do is that we want to level off the front of the cottage, by moving the living room wall forward by 37 inches, so it is in line with the outside wall of the kitchen. The final look would be similar to Units #15, #16, #17 and #18, but it would only be one storey. This will increase the total area by 33.68 square feet.

Unit #14 would also want to incorporate the storage room into the main bedroom. We also want to move some of the internal walls, to change the relative dimensions of the rooms. This will increase the area by about 13.67 square feet so the total increase will be 47.35 square feet. This increase is less than10% percent of the total area of 473.78 square feet.

We have included before and after drawings of the proposed alterations.

We hope to get strata members' support for our renovation. All the buildings in Beach Acres Resort are about 30 years old. Many new buildings have been built around us. We are facing the challenge of rising maintenance cost and competition from other newly built resort. Improvements which fit in the existing environment would benefit the resort, by both decreasing maintenance costs and benefiting the rental pool. A case like ours will save thousands of dollars for the strata, as the siding and sliding doors that will be replaced are in poor repair now and would have to be paid for by the strata in the future.

Sincerely,

Cecil & Li Sharp — Doug & Rosslyn Sherwood

Owners of Unit 14 — Owners of Unit 14

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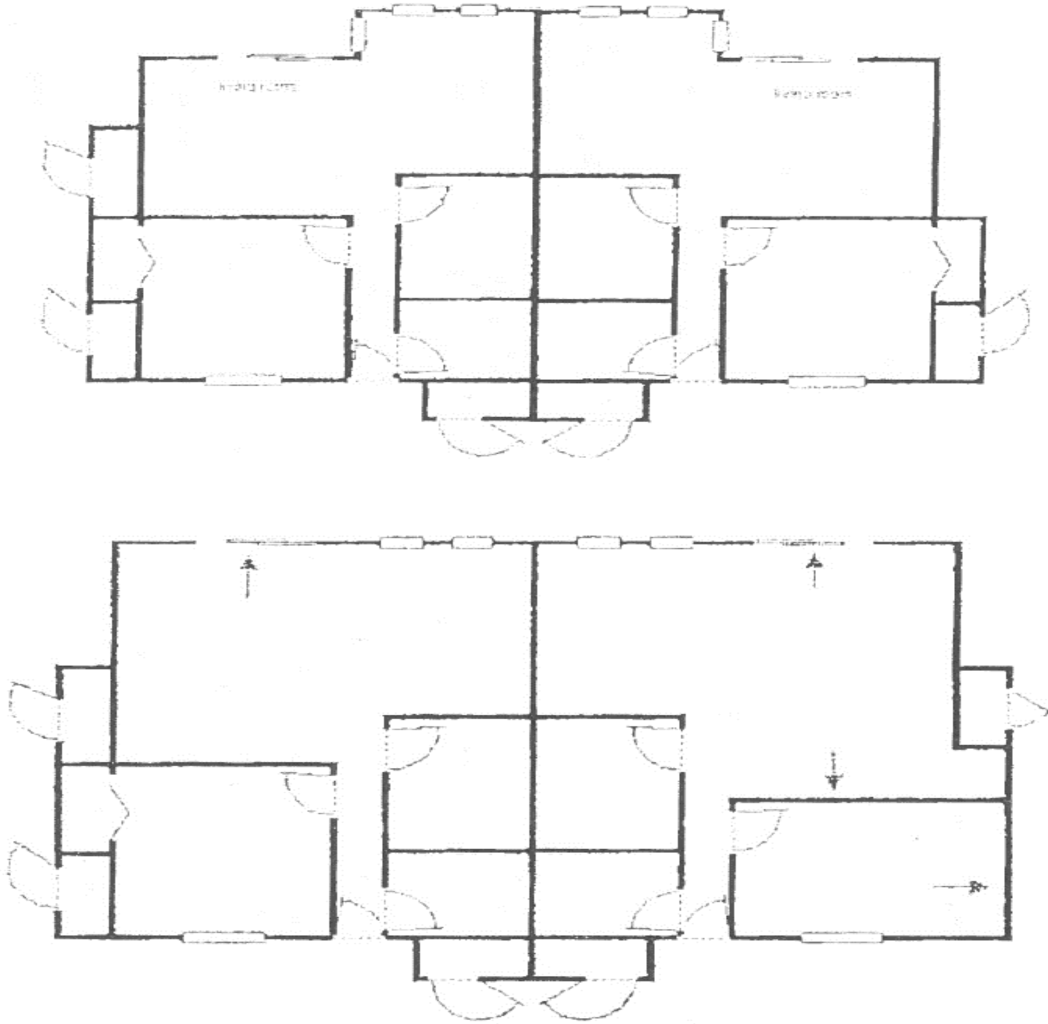

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