



Governance and Priorities Committee Report

For the Meeting of February 26, 2015

To: Governance and Priorities Committee
From: Robert Woodland
Director of Legislative & Regulatory Services
Subject: 380 Cook Street – The Strata Property Act

Date: February 4, 2015

Summary

The purpose of this report is to seek Council authorization to amend the bylaws pertaining to the strata lot owned by the City at 380 Cook Street.

Strata Plan VIS2529, known as Southgate Villa, is a mixed use strata building comprising thirty five residential condominiums and two commercial units, one of which is owned by the City. The City's unit – strata lot #1 – is occupied by the Cook Street Village Activity Centre, formerly the New Horizons Seniors' Centre. A location plan and photograph are attached in Schedules A and B respectively. As shown in Schedule C, Southgate Villa's bylaws provide that:

1. The condominium owners shall form a section within the strata corporation known as the "Residential Section", and
2. The City, as owner of strata lot #1, together with the owner of the other commercial unit shall form a separate section known as the "Commercial Section".

A section is a legal entity with the same powers and duties as a strata corporation in respect of matters exclusive to that section. Thus, a section must elect a strata council, create its own bylaws, have a separate budget, hold AGMs and hire a property manager. Because sections have a more complex governance structure, they are more difficult and expensive to administer.

Neither the Residential Section nor the Commercial Section at Southgate Villa has the structure required of a section and, hence, are in contravention of the Strata Property Act. The property managers for VIS2529, Cornerstone Properties Ltd., have proposed amending the bylaws by means of the resolutions attached in Schedule D. Together, they will cancel the two sections and allow the strata formally to conduct its business as a single strata corporation with different groups of owners identified in the bylaws. This is known as a types strata, and means that the strata fees (operating expenses) will continue to be allocated differently between the residential and commercial units.

At Southgate Villa the residential owners and the other commercial owner have indicated that they wish to replace sections with types. As it has operated successfully as a types strata for many years without the costs and administration associated with introducing sections, it is recommended that the bylaws be amended to replace the sections provision with types.

Recommendations:

1. That Council authorizes the Corporate Administrator to vote in favour of Resolution #1 of the Commercial Section of the Owners, Strata Plan VIS2529 to cancel the Commercial Section.
2. That Council authorizes the Corporate Administrator to vote in favour of Resolution #1 of the Owners, Strata Plan VIS2529 to cancel Sections.
3. That Council authorizes the Corporate Administrator to vote in favour of Resolution #2 of the Owners, Strata Plan VIS2529 to introduce Types.

Respectfully submitted,



Neil Turner
Property Manager



Robert Woodland
Director of Legislative
& Regulatory Services

Report accepted and recommended by the City Manager:



Date:

Feb. 17, 2015

Purpose

The purpose of this report is to seek Council authorization to amend the bylaws pertaining to the strata lot owned by the City at 380 Cook Street.

Background

Strata Plan VIS2529, known as Southgate Villa, is a mixed use strata building comprising thirty five residential condominiums and two commercial units, one of which is owned by the City. The City's unit – strata lot #1 – is occupied by the Cook Street Village Activity Centre, formerly the New Horizons Seniors' Centre. A location plan and photograph are attached in Schedules A and B respectively. As shown in Schedule C, Southgate Villa's bylaws provide that:

1. The condominium owners shall form a section within the strata corporation known as the "Residential Section", and
2. The City, as owner of strata lot #1, together with the owner of the other commercial unit shall form a separate section known as the "Commercial Section".

Notwithstanding its bylaws, Southgate Villa has always operated as a single strata corporation which differentiates between the residential owners and the commercial owners; this is known as a types strata.

Issues & Analysis

Strata sections and types are often misunderstood concepts. As a result, strata corporations may adopt bylaws to create sections, but then operate as if types had been created; this is the case at VIS2529. Consequently, the property managers, Cornerstone Properties Ltd., have proposed amending the bylaws by means of the resolutions attached in Schedule D. Together, they will cancel the two sections and allow the strata formally to conduct its business as a types strata.

Sections Within A Strata

A section is a legal entity with the same powers and duties as a strata corporation in respect of matters exclusive to that section. Although the creation of sections is generally prompted by a desire to allocate expenses fairly, sections require far more than separate budgets or the allocation of expenses, including their own strata council, separate bylaws and budget, the holding of AGMs and a dedicated property manager. As such, sections have a more complex governance structure and are more difficult and expensive to manage and administer.

Neither the Residential Section nor the Commercial Section at Southgate Villa has the structure required of a section and, hence, are in contravention of the Strata Property Act. Last year, the Real Estate Council of British Columbia, the licensing body for individuals and companies providing strata management services, instructed its members who manage strata properties with sections to bring them into compliance with the Strata Property Act.

Even after sections are properly created, the strata corporation retains powers and duties regarding matters of common interest to all owners, such as obtaining insurance. Each section is obligated to perform the duties that relate exclusively to its own lots, including the allocation of both operating and capital costs. Thus, as an example, the costs associated with both maintaining and replacing the elevator at Southgate Villa would be borne by the Residential Section only as the commercial lots on the ground floor are a separate section.

Types Within A Strata

As an alternative to creating sections, a strata corporation's bylaws can identify different groups of strata lot, known as types. These are typically residential and commercial lots, but other types can be differentiated. Unlike sections, types are not legal entities and do not require any of the

governance structure outlined above. In accordance with the Strata Property Regulation, a strata corporation may allocate operating costs to a particular type, but not capital costs paid out of its contingency reserve fund or raised by special levy.

Thus, in the above example, the cost of maintaining the elevator at Southgate Villa would continue to be shared between the residential owners only, but the cost of replacing it would be borne by the strata corporation from the contingency reserve fund to which all owners contribute. Alternatively, all owners, including the City, could be required to contribute to a special levy on the basis of unit entitlement. A copy of the unit entitlement is attached in Schedule E.

Present Situation At Southgate Villa

The City has owned Lot #1 since 1992, during which time Southgate Villa has operated as a types strata. As shown in Schedule E, the residential owners currently pay \$2.812 per unit of unit entitlement per month in strata fees (\$8,672.33/3084 units), as opposed to the commercial owners who pay \$1.891 per unit of unit entitlement per month (\$1,828.50/967 units). This reflects the additional operating costs attributed to the residential owners in the strata corporation's budget.

Options and Impacts

Council has the following options:

1. Replace the sections provision in the bylaws with types. The City can cancel the Commercial Section without the agreement of the other commercial owner as it has sufficient unit entitlement to achieve the $\frac{3}{4}$ vote that is required to pass the resolution.
2. Introduce the governance structure required to operate the Commercial Section created by the existing bylaws. The other commercial owner would be obliged to participate in the governance structure, however unwillingly, as the section is required by the bylaws until such time as they are amended.

When the matter of allocating costs by type or section is considered, the former may appear to be the obvious choice as it avoids the apparent duplication of administrative costs. However, the fact that capital costs cannot be allocated amongst types of strata lots may, in the long run, be a disincentive for at least one of the types.

At Southgate Villa, the residential owners and the other commercial owner have indicated that they wish to replace sections with types. The Commercial Section comprises two lots only; one owned by the City and one owned by Duckett Managements Ltd. Thus, the costs and administrative effort required to create the governance structure outlined above – in effect, a mini strata corporation – would have to be borne by these two parties.

As Southgate Villa has operated for many years as a types strata, and the other owners – both commercial and residential – wish to continue doing so, it is recommended that its bylaws be amended to replace the sections provision with types.

Recommendations:

1. That Council authorizes the Corporate Administrator to vote in favour of Resolution #1 of the Commercial Section of the Owners, Strata Plan VIS2529 to cancel the Commercial Section.
2. That Council authorizes the Corporate Administrator to vote in favour of Resolution #1 of the Owners, Strata Plan VIS2529 to cancel Sections.
3. That Council authorizes the Corporate Administrator to vote in favour of Resolution #2 of the Owners, Strata Plan VIS2529 to introduce Types.

**Schedule A
Location Plan**



Schedule B
Cook Street Village Activity Centre



STRATA PLAN VIS2529 BYLAWS SOUTHGATE VILLA

Division 1 - Duties of Owners, Tenants, Occupants and Visitors

Definitions:

- 1 "Residential Strata Lots" means all those strata lots designed for residential use being strata lots 3 to 37 inclusive of the strata plan and "Residential Strata Lot" means any one of them.
- 2 "Commercial Strata Lots" means all those strata lots which are not Residential Strata Lots being strata lots 1 and 2 of the strata plan and "Commercial Strata Lot" means any one of them.

Separate Sections:

- 1 The owners of all Residential Strata Lots shall form a separate section (the "Residential Section") within the strata corporation.
- 2 The owners of all Commercial Strata Lots shall form a separate section (the "Commercial Section") within the strata corporation.

Schedule D
Three Resolutions To Be Voted On

**3/4 VOTE RESOLUTION #1 OF THE COMMERCIAL SECTION
OF THE OWNERS, STRATA PLAN VIS 2529 TO CANCEL COMMERCIAL SECTION
(TO BE EFFECTIVE ONLY IF 3/4 VOTE RESOLUTIONS #1 OF EACH OF
THE RESIDENTIAL SECTION
AND THE STRATA CORPORATION ARE APPROVED)**

Whereas Bylaw 2 filed on ♦ under Land Title Office Registration No. ♦ provides for the creation of the Commercial Section;

And whereas the owners of commercial strata lots (being strata lots 1 and 2) would like to cancel the Commercial Section if the owners of the strata lots comprising the Residential Section and the Strata Corporation similarly vote to approve, as applicable, the cancellation of the Residential Section;

And whereas Section 193 requires that the cancellation of a section in part be approved by way of a 3/4 vote resolution of the applicable section;

BE IT RESOLVED AS A 3/4 VOTE RESOLUTION of the Commercial Section that:

- (a) the Commercial Section be cancelled; and
- (b) the bylaws of the Strata Corporation be amended by repealing the following bylaws:

Definitions:

- 1. *Residential Strata Lots" means all those strata lots designed for residential use being strata lots 3 to 37 inclusive of the strata plan and "Residential Strata Lot" means any one of them.*
- 2. *"Commercial Strata Lots" means all those strata lots which are not Residential Strata Lots being strata lots 1 and 2 of the strata plan and "Commercial Strata Lot" means any one of them.*

Separate Sections:

- 1. *The owners of all Residential Strata Lots shall form a separate section (the "Residential Section") within the strata corporation.*
- 2. *The owners of all Commercial Strata Lots shall form a separate section (the "Commercial Section") within the strata corporation.*

END OF RESOLUTION

**3/4 VOTE RESOLUTION #1 OF THE OWNERS, STRATA PLAN VIS 2529
TO CANCEL SECTIONS
(TO BE VOTED ON ONLY IF 3/4 VOTE RESOLUTIONS #1 OF EACH OF
THE COMMERCIAL SECTION
AND THE RESIDENTIAL SECTION ARE APPROVED)**

Whereas Bylaws 1 and 2 filed on ♦ under Land Title Office Registration No. ♦ provide, respectively, for the creation of each of the Commercial Section and the Residential Section;

And whereas the owners of the strata lot(s) comprising each of the Commercial Section and the Residential Section have at this meeting voted, by way of 3/4 vote resolutions, to cancel, as applicable, the Commercial Section and the Residential Section;

And whereas Section 193 requires that the cancellation of a section in part be approved by way of a 3/4 vote resolution of the Strata Corporation;

BE IT RESOLVED AS A 3/4 VOTE RESOLUTION of the Strata Corporation that:

- (a) the Commercial Section and the Residential Section each be cancelled; and
- (b) the bylaws of the Strata Corporation be amended by repealing the following bylaws:

Definitions:

- 1. *Residential Strata Lots" means all those strata lots designed for residential use being strata lots 3 to 37 inclusive of the strata plan and "Residential Strata Lot" means any one of them.*
- 2. *"Commercial Strata Lots" means all those strata lots which are not Residential Strata Lots being strata lots 1 and 2 of the strata plan and "Commercial Strata Lot" means any one of them.*

Separate Sections:

- 1. *The owners of all Residential Strata Lots shall form a separate section (the "Residential Section") within the strata corporation.*
- 2. *The owners of all Commercial Strata Lots shall form a separate section (the "Commercial Section") within the strata corporation.*

END OF RESOLUTION

**3/4 VOTE RESOLUTION #2 OF THE OWNERS, STRATA PLAN VIS 2529
TO AMEND BYLAWS**

(Section 128(1) of the *Strata Property Act*)

BE IT RESOLVED BY A ¾ VOTE of The Owners, Strata Plan LMS VIS 2529 (the "**Strata Corporation**") that the following be adopted as Bylaw #32:

Types of Strata Lots

#32 Types of Strata Lots

32 (1) The Residential Strata Lots shall be one "type" of strata lot while the Commercial Strata Lots shall be a different "type" of strata lot.

32 (2) A contribution to the operating fund which relates to and benefits only the Residential Strata Lots shall be shared only by the owners of the Residential Strata Lots. Each Residential Strata Lot's share of such contribution shall be calculated in accordance with the following formula from section 6.4(2) of the ***Strata Property Regulation***:

$$\frac{\text{unit entitlement of Residential Strata Lot}}{\text{total unit entitlement of all Residential Strata Lots}} \times \text{contribution to operating fund}$$

32 (3) A contribution to the operating fund which relates to and benefits only the Commercial Strata Lots shall be shared only by the owners of the Residential Strata Lots. Each Residential Strata Lot's share of such contribution shall be calculated in accordance with the following formula from section 6.4(2) of the ***Strata Property Regulation***:

$$\frac{\text{unit entitlement of Commercial Strata Lot}}{\text{total unit entitlement of all Commercial Strata Lots}} \times \text{contribution to operating fund}$$

32 (4) In accordance with section 6.4(3) of the Strata Property Regulation and despite bylaws 32(2) and 32(3), each strata lot's share of a total contribution to the contingency reserve fund or a special levy is to be calculated using the following formula:

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

END OF RESOLUTION

Schedule E

Lot #	Unit#	Unit Entitlement	Last Years Assessments	Difference per Month	Balance due Mar - May/14	New Monthly Assessments
1	001	737	\$1,377.73	\$15.86	\$47.58	\$1,393.59
2	002	230	\$429.96	\$4.95	\$14.85	\$434.91
		967	\$1,807.69	\$20.81	\$62.43	\$1,828.50
3	101	109	\$303.02	\$3.49	\$10.47	\$306.51
4	102	110	\$305.80	\$3.52	\$10.56	\$309.32
5	201	101	\$280.78	\$3.23	\$9.69	\$284.01
15	202	97	\$269.66	\$3.11	\$9.33	\$272.77
6	203	74	\$205.72	\$2.37	\$7.11	\$208.09
14	204	78	\$216.84	\$2.50	\$7.50	\$219.34
7	205	102	\$283.56	\$3.27	\$9.81	\$286.83
13	206	68	\$189.04	\$2.18	\$6.54	\$191.22
8	207	68	\$189.04	\$2.18	\$6.54	\$191.22
12	208	68	\$189.04	\$2.18	\$6.54	\$191.22
9	209	90	\$250.20	\$2.88	\$8.64	\$253.08
11	210	102	\$283.56	\$3.27	\$9.81	\$286.83
10	211	107	\$297.46	\$3.43	\$10.29	\$300.89
16	301	101	\$280.78	\$3.23	\$9.69	\$284.01
26	302	97	\$269.66	\$3.11	\$9.33	\$272.77
17	303	74	\$205.72	\$2.37	\$7.11	\$208.09
25	304	78	\$216.84	\$2.50	\$7.50	\$219.34
18	305	102	\$283.56	\$3.27	\$9.81	\$286.83
24	306	68	\$189.04	\$2.18	\$6.54	\$191.22
19	307	68	\$189.04	\$2.18	\$6.54	\$191.22
23	308	68	\$189.04	\$2.18	\$6.54	\$191.22
20	309	90	\$250.20	\$2.88	\$8.64	\$253.08
22	310	102	\$283.56	\$3.27	\$9.81	\$286.83
21	311	107	\$297.46	\$3.43	\$10.29	\$300.89
27	401	101	\$280.78	\$3.23	\$9.69	\$284.01
37	402	97	\$269.66	\$3.11	\$9.33	\$272.77
28	403	74	\$205.72	\$2.37	\$7.11	\$208.09
36	404	78	\$216.84	\$2.50	\$7.50	\$219.34
29	405	102	\$283.56	\$3.27	\$9.81	\$286.83
35	406	68	\$189.04	\$2.18	\$6.54	\$191.22
30	407	68	\$189.04	\$2.18	\$6.54	\$191.22
34	408	68	\$189.04	\$2.18	\$6.54	\$191.22
31	409	90	\$250.20	\$2.88	\$8.64	\$253.08
33	410	102	\$283.56	\$3.27	\$9.81	\$286.83
32	411	107	\$297.46	\$3.43	\$10.29	\$300.89
		3084	\$8,573.52	\$98.81	\$296.43	\$8,672.33