



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Rueger et al v. The Owners, Strata Plan VR 319*, 2017 BCCRT 80

B E T W E E N :

Barry Rueger and Susan Evans

APPLICANTS

A N D :

The Owners, Strata Plan VR 319

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Maureen Abraham

INTRODUCTION

1. This dispute is about the appropriate standard to which the respondent, The Owners, Strata Plan VR 319 (strata) must maintain its common property roadway. The applicants Barry Rueger and Susan Evans (applicants) are self-represented. The respondent strata is represented by strata an authorized council member.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. The applicable tribunal rules are those in place at the time the dispute was commenced.
6. Under section 48.1 of the Act, in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUE

7. The issue in this dispute is whether the strata is complying with its obligation to repair and maintain the strata's common property.

BACKGROUND AND EVIDENCE

8. The strata is a townhouse complex of approximately 82 units located in North Vancouver. Within the complex, the strata roads are fairly steep and are common property. When built, approximately 40 years ago, the roads included 8 – 11 sections of underground heating cables which, during the winter season when snow accumulates on the roads, are used to melt two six inch wide tracks on one side of the roadway used to access approximately 70 of the strata units. The cables had an anticipated lifespan of 10 – 20 years, and received some limited maintenance and repair over time as necessary.
9. In 2006, the first heating cables began to fail, apparently as a result of breakage in unknown areas of the buried cables. The cables on the roadway in the immediate vicinity of the applicants' strata lot failed in approximately 2013-2014. Six of the cable sets are now non-functional and each needs complete replacement in order to be functional. One section was decommissioned after continually tripping an electrical breaker, while another was decommissioned after causing electrical shocks to dogs being walked on the asphalt in the area.
10. The strata's depreciation report indicates that remediation and repair to common property (unrelated to the cable systems) is necessary in immediate future and that this will involve considerable expense. The depreciation report does not include any assessment of the state of the road cables, their anticipated maintenance/repair/replacement costs over time, and those costs have not been considered in the depreciation report's proposed funding models.
11. Commencing in or about 2013, the strata council undertook investigation into the source of the cable failure, options for repair and have concluded that complete

replacement of each of the cable systems would be necessary. The minutes provided evidence of difficulty in identifying the source of the failures and obtaining quotes for repair or replacement.

12. Both the applicants and the respondent have provided evidence in the form of correspondence with, and quotes from, potential contractors to undertake the cable replacement. The options presented include replacement of the cables and either limited infill or substantive repair of the asphalt. The quotes for replacement indicate that a minimum of \$60,000 per cable set is required. Further costs for project and engineering oversight are not necessarily part of the estimated cost.
13. At general meetings, the strata has held votes about funding the replacement of the heating cables. At each vote, a significant majority of owners voted against replacing the heating cables. The strata also consulted the owners on this issue informally at open houses.
14. At a special general meeting held November 4, 2014, the strata council presented two funding options for raising \$120,000, recommending that the strata proceed with replacement of two sets of failed cables by way of special levy or use of contingency reserve funds. At the time, the contingency reserve fund was \$163,000. It was contemplated that at least $\frac{3}{4}$ of the owners would approve one or the other funding option. Instead, neither option was approved with 31 of the 46 owners in attendance voted against both proposals.
15. At a special general meeting petitioned by owners and held December 15, 2014, another $\frac{3}{4}$ vote resolution was proposed under which \$120,000 from the contingency reserve fund would be used to immediately replace the cables, with the contingency reserve then replenished by way of a special levy. Again, 53 of the 62 voting owners in attendance refused to approve the resolution as proposed. At an annual general meeting held the same day, another resolution proposing a phased special levy for road cable replacement failed when it was supported by only 63% of the voting members.

16. At its annual general meeting held February 23, 2017, the strata council proposed a pilot cable replacement project, recommending owners approve a \$60,000 special levy to fund replacement of one cable set. The motion failed, with 32 of the 50 voting owners opposing the expenditure.
17. As a result of the owners' refusal to approve the cable replacement expenditure, the strata implemented a system of snow plowing and road salting with various contractors. The strata now says that this is a reasonable alternative method of maintaining the common roadways during the winter season. The strata says that the owners' refusal to fund cable replacements is because they prefer to let the cable system become decommissioned as it fails. They say that the owners are facing significant expense for upcoming, necessary siding and roof repair and that the decision to forgo cable replacement is reasonable in light of the competing maintenance projects and need for a budget the owners can afford.
18. The applicants have provided anecdotal evidence of a pedestrian sliding down the roadway, inconvenience in the timing and noise of snow plows and salting, as well as evidence of a firetruck failing to make it up the roadway in a heavy snowfall, to support their assertion that the cables must be replaced in order to provide reasonable access to and use of the roadway. They have also provided emails from various owners in 2014 asserting a need for the cables to be replaced or expressing dissatisfaction with the snow removal program in place at the time.
19. The strata says that the snowfall on the roadway which interfered with the fire truck's access was an anomaly and caused by severe weather conditions not usually occurring in the region.
20. The applicants have provided evidence in the form of an email from their insurer's representative suggesting that the strata's liability or insurance coverage may be impacted if the cables are not replaced. The applicants also rely on comments made by emergency personnel and municipal staff to the effect that owners are obligated to ensure that their roadways are accessible for emergency personnel,

and speculate that the heating cables were required by the municipality as a term of development approval given the road gradient.

21. The strata provided further correspondence from the insurer's representative clarifying that the strata's insurance coverage remains in force, and that the language of the policy does not require use of heating cables on the roadway. The strata also provided a statement from the municipality confirming that heating cables were not a municipal requirement, and correspondence from their service provider setting out the standard of service provided.
22. The strata has also submitted evidence indicating that public roadways located elsewhere in the municipality of similar steepness are likewise maintained through salting and plowing and do not employ asphalt heating systems. It says that in-ground heating cables are unusual in the area, and not necessary for road maintenance. Some evidence, in the form of email statements, was provided by the strata indicating that the roadways were ordinarily kept safe and usable throughout winter months as a result of this alternative maintenance and that the local fire department did not require the strata to replace the cables.

POSITION OF THE PARTIES

23. The applicants argue that the winter road maintenance done by the strata is inadequate and its roads are simply not safe without heating cables. They say the cables are necessary infrastructure that must be replaced, and are critical of the strata council and owners' decisions to approve other expenditures the applicants see as less urgent, such as swimming pool repairs.
24. The applicants request that I order the strata:
 - i. to fund a \$120,000 expenditure for repair or replacement of the road heating cables immediately above and below their strata lot, to be undertaken before the 2017-18 winter season;
 - ii. to commission a plan to restore other road heating cables to full operation;

- iii. to implement a capital reserve funding plan which will ensure that funds are available for future repairs and replacement of the cable system; and,
 - iv. To reimburse the applicants their tribunal fees in the amount of \$225.
25. The respondent relies primarily on the decision of the BC Supreme Court in *Weir v. Owners, Strata Plan NW 17* (2010 BCSC 784) and argues that the strata is obligated to maintain its common property to a standard of reasonableness, and says the maintenance being undertaken is reasonable in all the circumstances.
26. The respondent requests that I dismiss the applicants' claim.

ANALYSIS

27. The strata is obligated under section 72 of the Strata Property Act, as well as its Bylaw 8, to repair and maintain its common property and assets. This obligation can involve a duty to replace, where replacement is necessary in order for the common property to properly function.
28. The cables are part of the roadway infrastructure, and are part of the strata's obligation to maintain the common property which forms the roadway. The standard to which the strata is obligated to maintain and repair the cables, as part of the roadway, is measured by what is reasonable in all of the circumstances.
29. The *Weir* decision sets out the applicable approach: the starting point should be deference to the views of the strata council elected by the owners. In that decision, it is recognized that there may be "good, better or best" options available. A strata is not obligated to always pursue the "best" option. Each option must be considered in context, with a view to its cost, impact on the owners and with a view to achieving the greatest good for the greatest number of owners. Necessary repair and maintenance must be implemented within a budget that the owners can afford and which balance their competing interests.

30. The applicants say the appropriate standard for road maintenance requires replacement of the heating cables. In 2014, the strata council and a majority of the owners appeared to be of the same view. However, upon refusal of the owners to fund the replacement costs, the strata council was forced to explore and test alternative methods of maintaining the roads.
31. After the cable failures, the strata undertook investigation as to the cause of the failure and the options available for repair or replacement. Upon refusal of the owners to fund replacement, the strata council took a prudent approach to determine whether maintaining the roadways was possible without replacing the heating cables. The maintenance program is intended to ensure the roadways are ordinarily accessible and able to function in the winter months.
32. The strata says that maintaining the roads through the less expensive options of plowing and salting satisfies its obligation to maintain the common property. Those options have proven to be reasonable, although they may not be the “best” option. The evidence provided by the parties is that the roads are ordinarily accessible and fit for their intended use, though care must still be taken in winter conditions. The evidence also indicates that the cable system was of limited value, only heating a very limited portion on one side of the roadway.
33. I find the owner statements from 2014 of limited weight, given the passage of time and the fact that they were not provided for the purpose of this application, and so may or may not reflect those owners’ current views. The 2017 vote results suggest that there has been a decrease in support for cable replacement as the alternative maintenance program was implemented and revised.
34. The owners’ continuing refusal to approve funding for the cable replacement would seem to reflect overall satisfaction with the roadway maintenance in light of other ongoing strata maintenance, repair and remediation needs. Although they have approved expenditures for other work, including remediation of recreational facilities, this reflects a balancing of the competing interests of all the owners in how funds are allocated.

35. The maintenance being undertaken on the strata's roadways is the same or better than that taking place on public roadways in the area. There is no prejudice to the strata's insurance coverage and the strata is meeting its general obligation to provide access for emergency services.
36. The applicant has failed to establish that the roadways cannot properly function without heating cables. As noted, the evidence relied on by the applicants of unsafe conditions largely pertains to an incident which occurred during extreme winter storm conditions. Given the limited coverage and utility of the heating cables even when working, it is unclear whether working cables would have made a significant difference at the time. The balance of evidence indicates that, while caution is needed in winter weather, the roads remain accessible and safe to use as a result of the winter maintenance program undertaken by the strata, and that the cable system was of limited benefit to the owners in light of the expense associated with its operation and replacement.
37. Although the applicants say the strata should pursue the "best" option, the alternative maintenance program is sufficient. This less expensive option reflects a fair balance between the competing interests of the owners in ensuring that reasonable safety measures are taken, that the common property is not subject to loss or damages, and that the costs associated with maintaining the roads are minimized. I find that the strata is complying with its obligation to maintain and repair the common property to a reasonable standard and is not obligated to replace the in-ground heating cable system.

DECISION AND ORDERS

38. I order that the applicants' claim is dismissed.

Maureen Abraham, Tribunal Member