Civil Resolution Tribunal

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Civil Resolution Tribunal

Indexed as: *Link et al v. The Owners, Strata Plan KAS 828*, 2017 BCCRT 128

B E T W E E N :

Beverly Link, Byron Link, Nicole Loehr, Geoff Loehr, and Veronica Beier

APPLICANTS

A N D :

The Owners, Strata Plan KAS 828

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. The applicants Beverly Link, Byron Link, Nicole Loehr, Geoff Loehr, and Veronica Beier (collectively, the applicants) are owners in the respondent strata corporation The Owners, Strata Plan KAS 828 (strata).

2. This dispute involves a variety of claims about the strata's alleged historical failures to properly govern as required under the *Strata Property Act* (SPA). In particular, the applicants say the strata has failed to adequately: prepare financial statements and council meeting minutes, enforce bylaws, register bylaws, manage common property, and respond to requests for information.

3. The applicants are self-represented and the strata is represented by a council member.

JURISDICTION AND PROCEDURE

4. 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.

5. I pause to note that initially the respondent was named as "Strata Council KAS 828", which is not a legal entity. During the facilitation phase of this proceeding, the parties agreed that the strata was the appropriate respondent and the only respondent.

6. 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.

7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I heard 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. An oral hearing was not requested.

8. Under section 48.1 of the Act and the tribunal rules, 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.

ISSUES

9. The issues in this dispute are:

   a. Has the strata failed to properly prepare council meeting minutes, and if so, what order should be made under the SPA?

   b. Has the strata failed to provide the owners with proper financial statements, and if so, what order should be made under the SPA?

   c. Has the strata failed to enforce its bylaws, and if so should I order the strata to enforce its bylaws fairly?

   d. Should the strata reimburse the applicants $1,000.00 for the legal fees they incurred to address the strata's alleged failure to manage an annual general meeting (AGM) notice properly and for alleged improperly recorded bylaws?

   e. Have 2 owners living in a cul-de-sac within the strata improperly received use of common property as part of their driveways as a result of moving road curbs?

i. If so, should I order the strata to relocate the road curbs in the cul-de-sac to reflect all common property in the road way?

f. Has the strata failed to properly respond to the applicants' requests for information, and if so, should I order the strata to respond as required under the SPA?

g. Has the strata improperly provided information contained in an anonymous letter sent to the applicants, and if so, should I order the strata to comply with section 31 of the SPA?

h. Should I order the strata to reimburse the applicants their $225 in tribunal fees?

BACKGROUND

10. I have only commented upon the evidence and submissions as necessary to give context to my reasons.

11. The strata is a bare land strata plan, with 22 strata lots. The common property roadways create a shallow cul-de-sac, at the west side of the strata property. On the strata plan, the strata lots are numbered from 1 in the northeast corner and wrap around, somewhat in the shape of the letter 'G'.

12. Beverly and Byron Link (collectively, the Links) own and reside in strata lot 17 (unit 17). Unit 17 is almost in the southeast corner of the strata plan.

13. Nicole and Geoff Loehr (collectively, the Loehrs) own and reside in strata lot 1 (unit 1). Unit 1 is in the northeast corner of the strata plan.

14. Veronica Beier owns and resides in strata lot 15 (unit 15). Unit 15 is 2 strata lots to the west of unit 17, thus located in the south end of the strata plan.

15. The strata's relevant bylaws, filed on December 20, 2013, are as follows:

a. **Bylaw 4(3)**: An owner must within 14 days of occupancy notify the strata on a Form K the names, addresses, and phone number as requested on the form. While the Standard Bylaws refer to occupancy of a tenant, the strata's bylaw 4(3) does not expressly do so.

b. **Bylaw 8.1**: The strata must repair and maintain the common property.

c. **Bylaw 8.2**: The strata must maintain a financial statement indicating both income and expenses (1), which must be made available for viewing by any owner upon reasonable written notice (2). The strata must maintain a general chequing account and a contingency account within the parameters of the SPA or bylaws (3). All financial transactions made on behalf of the strata must have signatures of at least 2 council members designated as signing authorities (4). Any "plans, acts and or bylaws" about the strata must be made available for viewing by any owner upon request with reasonable written notice (5).

d. **Bylaw 14(4)**: The council must inform owners about a council meeting as soon as possible after the meeting has been called.

e. **Bylaw 17**: At council's option, council meetings may be held electronically, so long as all council members and other participants can communicate with each other (1). If a council meeting is held electronically, council members are deemed to be present in person (2). Owners may attend council meetings as observers (3), except for certain exemptions under sections 135 and 144 of the SPA or if the presence of observers would unreasonably interfere with an individual's privacy (4).

f. **Bylaw 18**: At council meetings, decisions must be made by a majority of council members present in person at the meeting (1), and the result of all votes at a council meeting must be recorded in the meeting minutes (3). There is nothing in the bylaws about recording in the minutes discussions leading to votes.

g. **Bylaw 22**: A council member who acts honestly and in good faith is not personally liable for anything done or omitted in the exercise of any council duty or power.

h. **Bylaw 23**: The strata may impose fines on an owner only after serving written notice and allowing that owner 7 days to either rectify the violation or request a council meeting. The maximum the strata may fine is $200 for each non-rental bylaw contravention.

i. **Bylaw 28**: This bylaw sets out the order of business at a general meeting in 15 steps. There is no reference to what must be contained in the general meeting minutes.

EVIDENCE & ANALYSIS

16. This dispute reflects the applicants' ongoing dissatisfaction with the strata's governance, including the applicants' view that the strata is biased in favour of certain owners. The dispute also reflects the strata's contrary position that the applicants have been unreasonably demanding and harassing.

17. Given this backdrop and the tribunal's mandate that includes recognition of the ongoing relationship between parties, the following comments are warranted at the outset of my analysis. Strata councils are made up of volunteers, and mistakes will be made. Within reason, some latitude is justified when scrutinizing its conduct (see *Hill v. The Owners, Strata Plan KAS 510*, 2016 BCSC 1753).

Meeting minutes

18. The applicants allege that in minutes for a June 2014 special general meeting (SGM), the strata failed to "reflect any information about the almost 3 hours of owner's discussion". The applicants say the strata improperly refused to amend the minutes to reflect the discussion. The applicants submit the minutes should have "provided at least an overview of the information and discussion" so that absent owners would be able to read the minutes and know what had occurred.

19. At the same time, the applicants say the strata provided information in these minutes that wrongly suggest council had done everything possible about the lack of snow removal. I disagree with the applicants' submission. The minutes note a complaint (from Ms. Beier) about snow removal and list the actions that council had taken, noting that "it could be" Ms. Beier's problems were attributable to ice forming rather than being the fault of snow removal services. There is nothing inappropriate in the strata's minute.

20. The strata notes the dispute spans a lengthy period of time, from November 2013 to the present. The strata submits that during that time, 10 of the 14 council members departed from council, some due to "being harassed and attacked by the applicants", although some have returned.

21. The strata submits that mistakes have been made by most of the 14 council members, and that errors are likely to continue as the council attempts to do its job "while under continuous attack by the applicants". The strata submits that when errors have occurred, council members have been transparent that the error was made and have attempted to correct the error. The strata submits that its understanding is that discussions are not included in the minutes and that the SPA does not specify what information must be contained in the minutes. For reasons that follow, I agree with the strata.

22. Minutes must be taken at every general meeting and every council meeting, including the results of any votes, under s. 35 of the SPA. There is nothing in the SPA that further details what those minutes must contain. The strata's bylaws summarized above do not add substantively to section 35(1).

23. I find the purpose of minutes is to inform owners of decisions made and money spent on their behalf. While the minutes must record the council's decisions, the SPA does not require that the minutes report on the discussions that led to those decisions (see *Yang v. Re/Max Commercial Realty Associates (482258 BC Ltd.)*, 2016 BCSC 2147 at paragraph 133 and after, and *Kayne v. Strata Plan LMS2374*, 2007 BCSC 1610).

24. I find the strata was not required to document the discussions in the minutes, though nothing would have been improper if the council had chosen to do so. If owners wish to know the details of the discussions at meetings, they should attend the meeting or send a proxy.

25. Next, the applicants allege that in April 12, 2015 council minutes improperly included a reference to the strata noting it was lucky to have a named person as its treasurer, because that conversation did not take place at the meeting and so should not have been included in the minutes. The applicants submit minutes are supposed to contain accurate descriptions of what was discussed at the meeting "not gratuitous comments Council wants to add for their own gratification". I find there is nothing misleading in council making the acknowledgement referenced, and I do not consider it to be a significant issue. I have insufficient evidence before me to support the suggestion that the strata made the comment "for its own gratification" or that anyone was in any way misled by the statement.

26. The applicants also allege that December 2015 and in September 11, 2016 council minutes do not accurately reflect those in attendance. The applicants say some time after the fact they asked the strata to correct the minutes to properly note who was in attendance and the strata failed to do so. There is no indication in the evidence before me that anything particularly substantive turned on who was in attendance or that significant decisions at issue in this dispute were made.

27. The strata submits that there were likely errors in these two instances in reflecting who was in attendance. It is also undisputed that the council minutes should accurately reflect those present. However, as noted above the strata is not held to a standard of perfection. That said, generally speaking if the strata knows of an error, it should acknowledge the error and consider including a correction in future minutes. Based on the evidence before me, I am not prepared to find the strata substantially failed to prepare meeting minutes as required under section 35 of the SPA. I dismiss the applicants' claims with respect to meeting minutes.

Financial statements

28. The applicants submit the strata council treasurer does not follow sections 6.1, 6.6, and 6.7 of the regulations under the SPA when reporting financial information to the owners. The applicants also say the strata does not have a "marked contingency account". The applicants say that all owners in the strata should know where all their money is spent. The applicants submit that because of the failures to follow the SPA, the regulations, and the bylaws, the strata has failed to act honestly and in good faith as required by section 31 of the SPA.

29. The regulations cited by the applicants require:

    a. Contributions to the contingency reserve fund (CRF) by a certain formula based on a percentage of the total operating fund budget (section 6.1),

    b. The budget for the fiscal year must among other things detail the opening balance in the CRF, the estimated income from all sources other than strata fees, the total of all contributions to the CRF and each strata lot's monthly contributions to the CRF, and the estimated balance in the CRF at the end of the fiscal year (section 6.6),

    c. For the purposes of section 103(3) of the SPA, the financial statement must contain certain enumerated financial information (similar to the information required to be set out in the budget) to which the financial statement relates "as of a day that is within the 2 month period" before the date of the AGM. Within 8 weeks of the fiscal year end, the strata must prepare a financial statement updated to the end of the fiscal year. For the purpose of distribution with the AGM notice, the strata may provide, by bylaw the required financial information "in a summary form" but at the AGM a fully compliant financial statement must be provided (section 6.7). The strata has no such bylaw permitting a summary form of the financial statement.

30. First, while I have found below that the strata's financial statements with respect to the CRF were inadequate for the 2016 and 2017 budget years, I find there is

insufficient evidence upon which I could conclude the strata acted dishonestly or in bad faith. In other words, based on the evidence before me, I cannot conclude the strata intentionally or recklessly prepared the inadequate financial statements. In short, the applicants have not established the strata failed to comply with section 31 of the SPA.

31. The strata submits it has received ongoing complaints about financial statements since December 2013. The strata says from around the 2013 AGM until July 2015 the strata's treasurer was an accountant. Since July 2015, the finances have been recorded by hand instead of on a computer. The strata says it relied upon advice from the Condominium Homeowners Association (CHOA), to which the strata sent its financial statements. I find little can be drawn from the fact the strata sent emails to CHOA, as on this issue they appear to have been sent after the fact. That said, that the strata sought assistance from CHOA supports my conclusion that the strata acted in good faith.

32. The applicants submit the strata has failed to comply with the strata's bylaw 8.2(3) regarding accounts. I agree, in that bylaw 8.2(3) requires the strata to act in accordance with the SPA and its regulation. For reasons discussed below, I have found that the strata failed adhere to the SPA and the regulations with respect to the CRF.

33. The applicants say that for the 2015-2016 Budget they received the year-end financial statement with annual general meeting (AGM) minutes, rather than earlier with the Notice of the AGM so that they could be discussed at the AGM. The applicants submit the AGM is scheduled only a few days after the strata's September 30 year-end, which does not allow sufficient time to comply with getting the books in order. The applicants note prior councils scheduled the AGM in November to allow for proper financial statements showing the year-end. On this latter point, the strata says it schedules the AGM in October to accommodate many owners who move south for the winter. However, the strata also appears to submit that it did include the financial statements with the AGM notices. The

evidence before me is not entirely clear, but the applicants are correct that the financial statements must be sent with the AGM notice.

34. The agenda for the October 3, 2015 AGM has as item #4 “Financial Report & Proposed Budget” and as an attachment a “Proposed Budget Fiscal 2016”. It was similarly done for the October 6, 2016 AGM.

35. Section 93 of the SPA states that subject to the requirements set out in the regulations, the strata must determine the amount of the annual contribution to the CRF. Section 95 of the SPA states that the strata must account for money in the CRF separately from other money of the strata, and that the strata must invest the money in the CRF either in investments permitted by the regulations or in insured accounts. Section 103 of the SPA requires that the strata prepare a budget for the coming fiscal year for approval by a resolution passed by a majority vote at each AGM. The proposed budget must be distributed “with the notice” of the AGM under section 45 and “must be accompanied by a financial statement”. The budget and the financial statement must contain the information required by the regulations and may be in the form set out in the regulations.

36. While the applicants briefly cited sections 6.1, 6.6 and 6.7 of the regulations, the substance of their submissions focus on the strata’s alleged failure to have a “marked” or “labelled” CRF account. I agree with the strata that there is no requirement that the bank account itself have such a label. However, the financial records must clearly identify the CRF, its balance, and the contributions to it. In reviewing the financial statements provided by the strata that were appended to the AGM notices, I find they do not adequately detail the CRF as required and summarized above. The “Budget 2016-2017” simply has a line item “GIC’s (contingency)” for the 2017 amount of $41,203.38. Other details required by regulation 6.7, the opening balance of the CRF and the details of any expenditures from the CRF, were not set out. The “Budget 2015-2016” did not set out any line items for the CRF at all. Setting out information about the CRF in AGM minutes that follow the AGM is insufficient.

37. Overall, in preparing its financial statements I find that the strata has failed to comply with the SPA, the regulations, and its bylaw 8.2(3), particularly with respect to detailing the opening and closing balance of the CRF, and the contributions to and expenditures out of the CRF. I order the strata to comply in future. I also order the strata to ensure the financial statements are properly sent out with the AGM notice in future.

Bylaw enforcement

38. The applicants submit the strata does not fairly enforce its bylaws. They say many owners fail to comply without any action being taken, but that "if you are on their hit list you are given a letter" about a bylaw breach. The applicants say that enforcement of bylaws needs to be fair for all owners.

39. The strata says that it understands it must enforce the bylaws. The strata is correct that enforcement does not necessarily mean a fine, as the offending behaviour may stop after a warning. As for the alleged differential treatment, the strata says that after it received complaints, the Links were asked to stop parking in the roadway outside their home, facing oncoming traffic just inside the complex entrance. The strata submits this is the only direction they or the other applicants have been given by the council and so the strata questions the 'hit list' comment. The strata notes some of the applicants have for some time been in violation of a pet by-law, but since no complaint was received the strata has not acted.

40. In supports of its position, the applicants submit parking from other owners "constantly" using the visitor parking "do not appear" to suffer the same consequences as the owner of strata lot 4 (unit 4). The applicants say the owner of unit 4 is their friend and therefore on the strata's "hit list".

41. The owners of unit 4 are not parties to this dispute. Based on the limited evidence before me, the applicants have not established the strata acted in any way inappropriately, including whether the notice requirements in section 135 of the SPA were complied with. In any event, I find that would be a matter for the owner of unit 4 to address, not the applicants. The strata says one of the applicants made

the complaint about unit 4 and that the strata is working with those owners about their renters.

42. In further support of its position, the applicants submit that owners, such as strata lot 9, have rented out rooms within their strata lot and do not give a Form K to the strata and when asked for it they are not given properly and the strata does not enforce it. I note a Form K is a "Notice of Tenant's Responsibilities".

43. The applicants submit that "several owners" had indicated concerns about 'strangers' in the complex at all hours. They provided one Form K from the strata lot 9 owner who is on the strata council, submitting that is not filled out properly. I have reviewed this Form K and it shows the owners and their "boarders", with the references to tenants in strikethrough. Under the SPA, a "tenant" is defined as a person who rents all or part of a strata lot, and includes a subtenant. Thus, a "boarder" likely is included. It appears the owners of strata lot 9 believed their boarders were not tenants, but nonetheless listed the boarders and their vehicles. I cannot conclude that the strata should have required this Form K to be completed differently in the circumstances.

44. Under this issue, the applicants also reiterate their submissions that the strata has failed to comply with bylaw 8.2(3), in that the strata does not have a "marked" CRF account. I have addressed this issue above, and while the strata must clearly and separately account for the CRF, it does not need to have a "marked" or "labelled" account. Moreover, the strata's alleged failure in this respect is not an issue of bylaw enforcement against owners.

45. The applicants also say the strata has failed to consistently comply with bylaw 14(4). The applicants say that the council has had an emergency meeting but only let the owners know when the minutes were released after the meeting, a week later. Bylaw 14(4) requires that the strata inform owners "as soon as possible" after the council meeting has been called. Here, the emergency meeting at issue was about immediate repairs to roadside curbs, to be done at no cost to the strata. The strata says it released the minutes 5 days after the meeting. I find that minutes

released within a week reasonably complied with the bylaw requirement given the emergency circumstances.

46. Given the nature of the applicants' claim on this issue and the unsupported allegation of a 'hit list', I turn to the issue of what must the strata do when it receives a complaint.

47. Section 135 of the SPA sets out a procedure for investigating a complaint, which includes providing the subject owner or tenant the opportunity to be heard, before any fine is levied. This protection is for the benefit of the owner or tenant that is the subject of the complaint, not the person making the complaint. Notably, there is otherwise no particular complaint procedure set out in the SPA and a strata council is permitted to deal with complaints of bylaw violations as the council sees fit, so long as it complies with the principles of procedural fairness and is not "significantly unfair" to any person who appears before the council (*Chorney v. Strata Plan VIS 770*, 2016 BCSC 148).

48. Once it has been determined that a bylaw contravention has occurred, council does not have the discretion to choose not to enforce a bylaw, as having such discretion would destroy the predictability provided by giving notice to owners of the bylaws by filing them in the Land Title Office. Enforcement of bylaws is mandatory, as set out in section 26 of the SPA. The strata does have discretion as to the amount of a fine, up to the maximum set out in the strata's bylaws.

49. Section 27(2) of the SPA states that the owners may not interfere with council's discretion to determine, based on the facts of a particular case, whether a person has contravened a bylaw, whether a person should be fined, or the amount of the fine. However, the strata must act reasonably. Based on the evidence before me, I cannot conclude the strata has acted unreasonably or treated any of the applicants significantly unfairly. Overall, I cannot conclude an order requiring the strata to fairly enforce its bylaws is warranted. I dismiss this claim.

Legal fee reimbursement

50. The applicants say they hired a lawyer to write to the strata council because the strata was going to register bylaws that were not recorded properly and the AGM notice was one day late so the AGM meeting was invalid. The applicants ask for reimbursement of the lawyer's $1,000.00 fee.

51. The applicants say that the notice for the October 3, 2015 AGM was provided 1 day late, and that the council failed to address the issue when the applicants brought it to their attention. Based on the underlying evidence, the notice was sent on September 14, 2017 and on September 21, 2015 a CHOA representative advised the strata (through Ms. Link, then on council) that the required 20 days notice would mean having the AGM on October 3, 2015 would be 1 day short.

52. The strata admits the miscalculation of the notice period for the October 2015 AGM. The strata says that at the time of the AGM, it was not yet sure that the notice was late. In any event, the minutes for the October 3, 2015 AGM states the strata council apologizes for the notice being one day late.

53. Under this issue, the applicants allege the October 3, 2015 AGM minutes "came out with very different wording than what took place", but provided no further details. The strata disputes this claim. I find there is little I can conclude from this submission and as noted above minutes need only record the decisions made, though to the extent council does describe discussions it should be accurately reflected.

54. The applicants allege the strata stated in its October 25, 2015 council meeting minutes that they were going to register the bylaw amendments. However, the minutes actually state "council will look into forms to register the bylaws, checking with a lawyer". There is nothing inappropriate in that comment, given the reference to seeking advice.

55. A November 24, 2015 letter from the Links' lawyer Adrienne Murray to the strata notes the wording of the resolution was absent from both the AGM agenda and the

proposed bylaw amendments. Ms. Murray also noted errors with respect to a pet bylaw being passed by a majority vote and the lack of clarity as to whether a vote supported the bylaw amendment or a decision to obtain legal advice. Ms. Murray was correct in her letter when she stated that no bylaw amendments should have been considered approved at that AGM and none should be filed at the Land Title Office. Ms. Murray also correctly noted the failure to comply with the 20-day notice period required under the SPA. Ms. Murray noted that to date the purported new bylaws had not been filed and she recommended that council not file them and to immediately notify the owners of their invalidity. Ultimately, the council reached a unanimous vote not to register the impugned bylaw amendments.

56. The applicants state that the strata must educate itself and comply with the SPA so as to give proper notice of meetings. I note that the applicant Ms. Link appears to have been on the strata council at the material time when the October 2015 AGM notice was one day late and appears to have been the person at least partly responsible for that situation as she was the one writing to CHOA asking if the chosen date provided adequate notice.

57. The strata referenced Ms. Murray's November 24, 2015 letter in December 20, 2015 council meeting minutes, and reported that the bylaws thought to have been voted upon at the AGM could not be in effect. The council reported that the bylaws must be reapproved by the owners before filing. The applicants say that it had no choice but to hire Ms. Murray because the strata "never answers any letters the applicants write" and the strata was given every opportunity to contact CHOA when they were told the notice was 1 day late.

58. The applicants further allege that the strata still continued to try to pass resolutions at the 2016 AGM, the following year, without proper wording for amending the bylaws. The strata acknowledged this error in October 6, 2016 AGM minutes, namely that the wording "Be it resolved by a ¾ vote of the owners of Strata Plan KAS 828" was omitted before the wording of the bylaw. In those minutes, council took responsibility for the error and noted that the passing of amended bylaws would have to wait for a special general meeting or at the 2017 AGM. The

applicants also say the strata attempted to bring a resolution on the use of common property at the October 6, 2016 AGM, without providing any wording regarding a resolution. The AGM minutes acknowledge an error, again noting the vote would have to be deferred. The applicants say the missing wording was pointed out to the strata the year before. The strata says that in 2016 Ms. Link again appears to have had information from CHOA on the appropriate wording required, but did not relay it to the rest of council until October 3, 2016.

59. The strata submits the legal expense was unnecessary and it could have contacted CHOA had it been given the opportunity to do so. Further, the strata submits the applicants did not provide proof of the expense as there was no legal invoice provided in the applicants' evidence. The applicants did not reply to this submission and instead provided a reply repeated for each claim that the applicants seek the remedies requested. There is no legal invoice in evidence from Ms. Murray.

60. Certainly, the strata failed to properly handle the AGM notice in 2015 and the wording of the ¾ vote resolutions in both 2015 and 2016.

61. However, this particular claim is for reimbursement of the applicants' alleged legal fees in the amount of $1,000.00. First, the applicants' failed to produce an invoice from Ms. Murray when the strata expressly drew to their attention the invoice was not included in evidence and that the strata wanted to see proof. I do not know whether $1,000.00 was in fact paid to Ms. Murray and if so for what services covering which period of time. The strata is entitled to such proof before being ordered to make a reimbursement. Second, I am not satisfied given the overall circumstances that the applicants' legal expenses in addressing the bylaws. They could have contacted CHOA themselves, as Ms. Link herself had done on more than one occasion. Third, as noted in the tribunal's rules, the tribunal generally does not provide reimbursement of legal fees, and while the fee claimed here presumably occurred before the dispute began, I do not consider the applicants' claimed expense to be an appropriate reimbursement in this dispute. I dismiss this claim.

Road curbs

62. The applicants submit 2 owners in the cul-de-sac, whom I infer are the owners of units 10 and 11, have had a "few feet of common property" form part of their driveways as a result of the strata's moving the road curbs. As noted above, the strata is the only respondent in this dispute. I do note that the owner of unit 11 is the strata's council representative in this dispute.

63. The applicants ask for an order that the strata fix and relocate the road curbs in the cul-de-sac to reflect all common property in the roadway. Implicit in this request is that all owners bear their proportionate share of the associated expense, given the strata is the only named respondent.

64. In contrast, the strata submits that no curbs have been moved and "nothing has been added to anything since the complex was built". As for whether the driveways of units 10 and 11 include some common property, the strata submits the property lines cannot properly be determined within the complex since a slide occurred shortly after the complex was built. The strata submits that to its knowledge, there is no owner who has a legal survey certificate that properly addresses the location of property lines. I pause to note that while a legal survey may now be difficult, I do not accept on the evidence before me that it would be impossible. However, as discussed below that conclusion is not determinative.

65. The strata further submits it does not believe common property is accurately reflected by roadways, Gabion (or retaining) walls or fences anywhere in the complex. This may well be true, but I have insufficient evidence before me to decide the matter. The strata says to survey the entire complex and then to match property lines with roadways would be an excessive unnecessary expense for all owners. As discussed further below, I find that a decision to do such a survey should be made by the owners through the appropriate vote under the SPA.

66. The applicants did not provide a substantive reply to the strata's submissions on the road curbs issue.

67. I turn then to the underlying facts related to the road curbs. The strata decided the roads and curbs in the strata needed to be upgraded. An SGM was scheduled for May 19, 2015. The SGM agenda included an item for "discussion of common property in lower cul de sac" in front of units 9, 10, and 11. The SGM minutes note there was a suggestion to have "a routine agenda motion passed at the AGM that addresses property lines". Based on the evidence before me, I find this "property lines" concern related to a general concern across the entire strata complex that property lines were unclear, but likely included the property lines at issue in this particular claim.

68. The essential point is that the strata was built about 25 years ago. Based on the evidence before me, I find that the owners all understood that the specific "property lines" concerns affecting units 10 and 11 were that the common property roadway appeared to be included as part of their strata lot, namely the end of their driveway. I find that from the time the strata was built and until the October 2016 roadwork, the road curbs existed in the same location. Where that location was in relation to the legal property lines remains unknown, as there is no valid survey to date. As discussed below, I further find the road curbs' locations were never moved.

69. What happened in the fall of 2016 is that one owner in the affected cul de sac proposed to change the contour of the curbs, but ultimately as set out in council minutes the council decided that the contour of the curb would remain as it always had. As noted above, keeping the 'status quo' in this manner meant the unit 10 and 11 owners possibly had the benefit of common property at the end of their driveways. Meanwhile, the unit 11 owner made it clear she did not support moving the curbs re-situated on the alleged property line as proposed by the Links because that would have made access to their garages unusable.

70. The applicants submit that surveys were done to show where the property lines were and the property lines were clearly marked at that time. In support, in addition to surveys that I find do not properly identify the property lines, the applicants referenced a photograph of a driveway. I find little if anything can be drawn from

this photo, and I note it does not clearly show marked property lines, as alleged by the applicants.

71. Based on the evidence before me, I find the strata has not moved the road curbs in issue. As noted above, I find the curbs are located in the same place they have historically been located.

72. To the extent the applicants argue that the curbs should be moved now because the owners of units 10 and 11 have improperly had the benefit of common property, I dismiss that claim. First, the applicants bear the burden of proof and they have not established that units 10 and 11 have the improper use of common property. I say this primarily due to the lack of an adequate legal survey of the property lines. Second, as noted I find the location of the curbs has historically been exactly where they are now. To move those curbs now would do one of two things. First, it would potentially encroach on the property of units 10 and/or 11, such as if the property boundaries differ from what the applicants allege. Second, if the property lines are as the applicants allege, moving the curbs would be a significant change in the use or appearance of common property. As set out in section 71 of the SPA, such a significant change at this point would require a resolution to be passed by a ¾ vote of the owners. Either way, the applicants have failed to establish that the requested remedy is appropriate.

73. I dismiss the applicants' claim with respect to the road curbs. Nothing in this decision prevents the applicants from asking for a vote of the owners on the issue in accordance with the SPA.

Requests for information

74. The applicants allege the strata council does not respond to requests for information when letters are written in accordance with the SPA. The applicants ask for an order requiring the strata to follow the SPA requirements.

75. Section 35(1) of the SPA lists the records the strata must prepare:

a. minutes of annual and special general meetings and council meetings, including the results of any votes;

b. a list of council members;

c. a list of

i. owners, with their strata lot addresses, mailing addresses if different, strata lot numbers as shown on the strata plan, parking stall and storage locker numbers, if any, and unit entitlements,

ii. names and addresses of mortgagees who have filed a Mortgagee's Request for Notification under section 60,

iii. names of tenants, and

iv. assignments of voting or other rights by landlords to tenants under sections 147 and 148;

d. books of account showing money received and spent and the reason for the receipt or expenditure;

e. any other records required by the regulations.

76. Section 35(2) of the SPA lists the records the strata must retain, which includes all of the records listed in section 35(1), the registered strata plan and any amendments, the SPA and regulations, the strata's bylaw and rules, resolutions dealing with changes to common property, written contracts to which the strata is a party, the budget and financial statement for the current year and for previous years, "correspondence sent or received" by the strata and council, bank statements, cancelled cheques and certificates of deposits, and reports obtained by the strata about repair or maintenance of major items such as engineering reports. Section 4.1 of the Strata Property Regulation also requires the strata to prepare a record of contact information for each council member.

77. Section 4.1 of the Regulation further sets out the timeframes the strata must retain the various records. Depending on the type of document, the retention period varies between 2 and 6 years.

78. While section 35(2)(k) requires the strata to retain "correspondence sent or received by the strata corporation and council", communications between council members are not listed. I find the strata is not required to retain or produce such records, for the same reasons given in my earlier decision in *Pritchard v. The Owners, Strata Plan VIS3743*, 2017 BCCRT 69 at paragraph 36.

79. Section 36 of the SPA states that on receiving a request, the strata must make the records and documents referred to in section 35 available for inspection and provide copies to an owner, within 2 weeks.

80. There is an abundance of correspondence between the applicants and the strata, on various issues. The strata submits there were 70 pieces of correspondence from the Links and Ms. Beier, some of which contained multiple complaints. This is essentially undisputed. I do not find it necessary to analyse every letter or communication. I say this primarily because the applicants have not established that the strata failed to respond as required to a particular document.

81. The applicants submit that the council "does not pay any attention to any letter written by any of the applicants as they are ending up in the strata email trash bin". The email cited in support was from the strata to Ms. Link, noting that a specific letter was found in the "junk mail" and the strata offered a short meeting to discuss the points raised in the letter. I find the applicants' submission somewhat disingenuous and overly broad in its conclusion. The strata submits that there were 2 occasions since 2013 where the applicants' emails went to the 'junk' email box and the applicable owners were notified. The applicants did not expressly dispute this submission. Based on all of the evidence before me, I find the strata has responded to the applicants' correspondence as required by the SPA.

82. The applicants also cite March 23, 2014 minutes as evidence that the strata does not respond within the SPA timeframe of 2 weeks. A complaint about the way the

strata handled those minutes is out of time under the *Limitation Act*, as more than 2 years passed between those minutes and when the August 16, 2016 Dispute Notice was issued. That said, those minutes note the volume of complaints received from, I presume, the applicants and that they were attached separately. The minutes also note that due to the volume of correspondence the strata would prioritize responses that were required under section 36 of the SPA. I see nothing in appropriate in the strata's response in those respects. Apart from the requirements set out in sections 35 and 36 of the SPA, there is no requirement in the SPA for the strata to respond to every piece of correspondence.

83. The applicants complain that a former council member wrote a letter to all owners about an irrigation matter involving the Links' property, which prompted the Links to demand an apology from the strata which the strata then provided. The applicants say that the same former council member replied. It is unclear to me how this issue relates to the claim that the strata failed to produce documents required by sections 35 and 36 of the SPA. I therefore will not address this issue further, although I note the strata's apology and that it would seem the matter is resolved.

84. I have addressed the issue of what must be contained in minutes above, and to the extent the applicant's request under this claim includes the allegation the strata failed to provide enough detail in minutes, I find that claim is not established.

85. The applicants also appear to say that the strata failed to respond to all of their requests for information about the strata's snow removal contract and related payments, or that the strata failed to respond within the timeframe required by the SPA. I find the applicants failed to establish the strata failed to respond as required. Here, as one example, the applicants reference an email sent by Ms. Link asking the strata to provide explanations of who authorized snow plowing on various dates, However, the strata's explanation in response would not be a document the strata must prepare under section 35 of the SPA. Rather, the records of the snow plowing and of whatever communications were sent between the strata and the snow plow company would be the required record to retain and

produce. The applicants submit the strata responded several months later. Given the volume of correspondence from the applicants, and that the strata's explanation is not within the mandated records under the SPA, I cannot conclude such timing was unreasonable.

86. The strata denies that it failed to adequately respond to requests for information. The strata submits that due to the high volume of correspondence, it created a tracking sheet to record the dates of the correspondence and when a response was provided. This sheet was provided and it was used from November 25, 2013 to July 8, 2014. After a change in council members, the sheet was no longer used but emails were printed and kept on file. The tracking sheet that spans less than a year is 10 pages long with about 30 entries per page, a significant portion of which reflect correspondence sent by the applicants.

87. In 2014, Mr. and Ms. Link each wrote the strata requesting information from the strata and with a 'disclaimer' purported to prohibit the strata from sharing her correspondence with anyone, including when the strata said it wanted to contact CHOA for advice. I am satisfied that the strata attempted to provide a timely response to the applicants, even though the response may not be what the applicants desired. I also find that the applicants unnecessarily created obstacles for the strata that caused some of the delays, by suggesting that the strata could not share their correspondence with CHOA for the purposes of seeking advice.

88. I am mindful of the tribunal's mandate, which includes recognition of the ongoing relationship between the parties. I also recognize the strata's expressed hope that this decision will help avoid further conflict between the parties. There is no limit set out in the SPA as to how often an owner can request a document. The strata can charge for copying a document, in the amount proscribed in the SPA regulation, but cannot charge for inspection of documents. Document inspection should occur during regular business hours, unless the parties agree otherwise. The parties should conduct themselves reasonably.

89. Given my conclusions above on the evidence before me, I am not satisfied that an order is required for the strata to comply with the SPA and its bylaws with respect to document inspection or production. I dismiss this claim.

SPA section 31 good faith obligation – the anonymous letter

90. Section 31 of the SPA states that in exercising the powers and performing the duties of the strata, each council member must act honestly and in good faith with a view to the best interests of the strata, and, exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances.

91. The applicants submit that an anonymous letter was sent to the applicants that contained information provided by the strata council. The applicants submit that in doing so the strata did not act honestly and in good faith. The applicants ask for an order that the strata follow section 31 of the SPA.

92. The anonymous letter in issue was provided to the tribunal. It generally describes bullying and harassment unidentified owners in the strata. At the top of the letter, it states the contents were endorsed by 17 of 22 owners in the strata (not named) and that all owners had received the letter by mail. The letter does not identify the applicants as being the 5 owners who did not endorse the letter nor does it identify them as the bullies or harassers. The letter describes examples of bullying and concludes that the behaviour negatively impacts property values and that bullying will not be tolerated.

93. The letter is largely opinion in describing the offending behaviour. The material point is that I am satisfied the strata had legitimate concerns about the conduct of certain owners in the strata and with the support of most owners in the strata the letter was circulated in an effort to address those concerns. Overall, I cannot find the strata acted inappropriately.

94. The strata submits that the majority of owners were distressed by a number of issues, and that to date there have been 3 police reports filed and 10 resignations from the strata council, which the strata suggests is due to the attacks from the

applicants. The strata submits that when some of the applicants were on council, owners in the strata were unhappy about the way strata governance was handled. The strata submits that since the applicants are no longer on council, their attacks against the strata have been ongoing.

95. The strata submits that "no council member was the author of the anonymous letter that went to owners in October of 2015". The applicants bear the burden of proof, and considering the evidence as a whole, I find the applicants have not established the council authored the letter.

96. The strata's council representative acknowledges she was one of the owners who endorsed the contents of the letter. Having reviewed the letter and considered the entire underlying context, I cannot conclude the strata failed to act honestly or in good faith in allowing the letter to circulate, to the extent the strata did so.

97. It is clear from the volume of correspondence between the parties that there has been animosity and distrust for years. Based on the evidence before me, I find most of that was communicated by the applicants, and the Links in particular. That said, I do recognize at least one email sent by a council member (since resigned) to all owners about an irrigation box in the Links' yard. On July 27, 2016, the strata wrote an apology to the Links about the email, which the strata acknowledged should not have been sent to all owners by that one council member as representative of the entire council. I also note that the council member who wrote the email in question responded with concern that the strata was capitulating to the Links at his expense. I mention this example to demonstrate the strata was apparently attempting to fairly address the ongoing complaints and requests advanced by applicants, and primarily the Links. As noted above, I find I have insufficient evidence before me upon which I could conclude the strata failed to act honestly or in good faith. I dismiss this claim.

Tribunal fees

98. Under section 49 of the Act, and tribunal rules 129 and 132, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal

fees and reasonable expenses related to the dispute resolution process. I see no reason in this case to deviate from the general rule.

99. The strata was substantially successful in this dispute. Of the 7 above claims, the strata succeeded in all but one, with respect to the preparation of financial statements. I order the strata to reimburse the applicants $112.50, half the tribunal fees paid. There were no dispute-related expenses claimed by either party and no tribunal fees paid by the strata.

DECISION AND ORDERS

100. I order that:

a. The strata must comply with the SPA, its regulations, and bylaw 8.2(3) with respect to preparing financial statements, including properly detailing the CRF balances and contributions and including providing financial statements with the AGM notice.

b. The strata must reimburse the applicants $112.50, half the tribunal fees paid.

c. The applicants' remaining claims are dismissed.

101. As provided by section 167 of the SPA, I order the strata to ensure that no part of the strata's expenses with respect to defending this dispute are allocated to the applicants.

102. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.

103. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal

amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently $35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair