Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *McDowell v. The Owners, Strata Plan 1875*, 2018 BCCRT 11

B E T W E E N :

Tom McDowell

APPLICANT

A N D :

The Owners, Strata Plan 1875

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member: Patrick Williams

INTRODUCTION

1. The applicant Tom McDowell (owner) owns strata lot 2 (SL2), in the respondent strata corporation, The Owners, Strata Plan 1875 (strata). The strata is a bare land strata, comprising 14 strata lots with an address of 901 Columbus Place, Victoria, BC. This dispute is about the governance of the strata and the owner's access to strata records under sections 35 and 36 of the *Strata Property Act* (SPA). The

owner has requested several orders with respect to past and future governance of the strata.

2. The owner is self-represented and the strata is represented by an authorized member of the strata council.

JURISDICTION AND PROCEDURE

3. 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 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.

4. 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 there are no significant issues of credibility or other reasons that might require an oral hearing.

5. The tribunal may accept as evidence information 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.

6. The applicable tribunal rules are those that were in place at the time this dispute was commenced.

7. 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

8. The issues in this dispute are:

a. Has the strata violated the provisions of the SPA and the strata's bylaws? If so, should any of the following orders be made?

i. An order granting the owner a hearing requested October 14 and November 14, 2016;

ii. An order requiring the strata to dedicate a council meeting to reading the SPA and the strata's bylaws;

iii. An order requiring 2 strata council members attend a VISOA workshop;

iv. An order requiring the strata provide a letter of apology to the owner;

v. An order that the strata hold at least one but probably 3 council meetings annually;

vi. An order requiring the strata to issue letters of reprimand to Norm Cress and Doug Crockett;

vii. An order requiring the strata to contact all owners acknowledging SPA violations occurred, seek approval for the council minutes as they presently stand, agree on corrections, share the corrected versions and issue a checklist to avoid a repeat;

viii. An order requiring the strata to review historical sewage treatment tank inspection schedules and adhere to them, prioritize and list out maintenance needs, find and secure digital AGM recording and review annually;

ix. An order requiring the strata to grant the owner access as requested to any and all strata records within 7 days.

b. Should I order the strata to reimburse the owner $225 in tribunal fees?

BACKGROUND AND EVIDENCE

9. The evidence in support of the relief sought by the owner and the evidence of the strata in response to that relief sought is extensive. I have only commented upon the evidence and submissions as necessary to give context to my reasons.

10. The strata is a bare land strata complex that comprises 14 strata lots. The strata is self-managed. A small bare land strata usually requires less management than a conventional strata, since the common property is typically restricted to the roads, amenity areas and similar facilities. One would expect the council to meet less frequently and not be inundated with frequent demands to properly govern the strata.

11. That has not been the case in the present situation. This dispute is about the owner's ongoing dissatisfaction with the strata's governance since 2011 and the strata's contrary view that the owner has been unreasonably demanding and exacting. The owner has made frequent demands on the council members' time; demands that for the most part I find to be unreasonable and unnecessarily critical. One must not forget that council members are volunteers.

EVIDENCE

12. The bylaws of the strata are those filed in the land title office and the standard bylaws to the SPA. The first set was filed October 16, 1996 under No. EK116018. This filing comprises the comprehensive bylaws of the strata. The second set was filed October 10, 2014 under No. CA4042071. This filing is restricted to electronic voting at strata meetings.

13. At one time, the owner was a member of the council. He has not been a member of council during the material times with respect to the dispute.

14. The council met May 12, 2013. The owner attended and made a 38 minute presentation. The minutes of that meeting list the many items discussed. The owner stated that general meetings were taking too long due to more than one person being present for every strata lot. His opinion was that even though there is only one vote per lot, having more than one person expanded the discussion unnecessarily.

15. At the May 12, 2013 council meeting, the owner stated that it was his intent to raise 33 other issues at the next annual general meeting or with the next council.

16. The owner has sent many emails to the council. Several of these emails comprise issues that the owner believes should be addressed at a general meeting and several are lengthy. For example, the owner listed 29 issues to be addressed at the 2015 annual general meeting and noted that his issues should be recorded or noted in minutes under 'new business'. An example is issue 29:

> *"29) A Strata 1875 vision/mandate/charter paragraph/statement should be compiled & shared with all new lot purchasers. This statement - one that is agreed by all - that hopefully states how our strata yes respects the strata act but relies on active strata Exec input/support/self-nomination .. on a rotation basis - AGM hosting too - one that relies on work party support/involvement - that no one lot has more than one representative on the Exec ... or any sub group ... will ensure each member feels their [sic] is open, transparent & equal representation .. planning and vision. Exec to refine wording."*

17. Lengthy emails deal with revision of minutes. Prior to the 2016 annual general meeting the owner emailed 11 issues to be addressed. One of those issues was that the 2016 annual general meeting minutes be read out before the 2016 annual general meeting was brought to a close. The minutes of the 2016 annual general meeting held September 27, 2016 were circulated. The minutes noted that the owner requested items be added to the agenda when the agenda was being

approved. Only the vote of SL2 was in favour. The minutes stated that the items were not added to the agenda. The owner argued that the minutes should list each item.

18. The council prepared a draft of the minutes for the 2016 annual general meeting and circulated the draft to all owners within one month of the annual general meeting being held. In a 5 page email dated October 26, 2016, the owner addressed 24 items in the draft that either were inaccurate or needed to be further addressed. He stated that his email was only Part 1. Part 2 would be relayed once he had received access to unabridged e-notes taken or documenting actual discussion. He said that he was looking forward to discussing this and more at the hearing he had requested October 14, 2016.

19. A digital recording was taken and used in order to draft the minutes of the 2015 annual general meeting. Once the minutes were drafted by the secretary, the recording was not retained.

20. The strata has a large common property disposal area field, in which a sewage treatment tank is situate. Historically, the tank's inspections were conducted by owners using a dedicated checklist to augment the maintenance carried out by a professional plant maintenance company. A checklist dated October 23, 2005 documented the items addressed. This was the last time the strata performed that service. The majority of owners wished a professional sewage treatment plant maintenance company to exclusively carry out inspections of the tank. Reports of Save-On-Septic Services Inc. of March 17, 2014 and of Coast Environmental of September 3, 2015 and July 15, 2016 were produced.

21. In an email dated October 26, 2016 subsequent to the 2016 annual general meeting, the owner noted that the hydro bill had spiked 60%. He said the spike was due to the tank having an alarm event. He accused the strata of moving away from some of the recommendations in the depreciation report. There is no evidence that the strata had ignored the depreciation report.

22. By email dated December 1, 2016, the owner made 16 demands to the council about the tank inspections. Many of these demands were unduly critical. An example is Item 8 that states in part “note that one always learns more from mistakes – recent councils have racked up so many that a PhD thesis could easily be presented!”. The council replied by email dated December 3, 2016. That email stated that the treatment tank service providers were the experts on this issue. Regardless, council conceded a recommended pump was not well founded and ceased working with the increase in power consumption. It was rectified because council members first noticed the problem and followed up with a third party assessment; not due to input from the owner.

23. The owner’s claims for relief include an order that the strata grant the owner access to any and all strata records within 7 days. There is very little evidence on this matter. There is a request for a digital recording of the 2015 annual general meeting. In an email dated October 23, 2015 the owner requested a digital copy of the recording. There appears to be a request made by the owner for copies of Canada Revenue Agency tax submittals - those were provided in due course, although not within 7 days of the request. The strata stated they could not be provided because they had not been received from the Canada Revenue Agency.

24. The owner has alleged that the strata has not had a sufficient number of council meetings on an annual basis. There is evidence of minutes of council meetings held (a) March 2, 2011, (b) May 23, 2012 and (3) May 12, 2013. There are no minutes of a council meeting in 2014. There was a council hearing with the owner December 29, 2015 and a council meeting January 5, 2016 to address that hearing. There are minutes of a council meeting held June 29, 2017.

25. The owner requested and was granted a hearing with council on December 29, 2015 (the Dec. 2015 hearing). The council responded in writing on January 5, 2016. The owner provided a lengthy document of submission at the Dec. 2015 hearing (the submission). The submission was titled “Second rate … or a solid, forward thinking, well run, innovative and sustainable strata?” The submission included formal requests, specific questions and a closing statement.

26. The formal requests at the Dec. 2015 hearing and the strata responses were the following:

    a. A written apology for the actions of the president Doug Crockett and those of the past president Frank Lyne, with copies to all owners, for allowing SPA and strata bylaw violations to take place, not acting on them and doing everything possible to push things back. The strata responded that the current council could not speak for previous council members. The council believed there was no evidence to suggest that previous councils had not acted in good faith. The council would continue to act in good faith while representing all 14 strata lots.

    b. *A* formal reprimand, by Doug Crockett to Norman Cress for his actions/his shell game approach to SL2 on same. The council stated it was not the mandate of the council to reprimand any owners unless they had specifically contravened a bylaw or rule. The strata noted that the SPA [it is actually standard bylaw 19] indemnifies council members acting in good faith with a view to representing the best interests of the strata.

    c. Full and immediate access to strata tax forms and working copy of the strata excel file up to the 2015 annual general meeting. The council gave the owner a copy of the 2013 tax assessment. Council confirmed that returns for 2014 and 2015 had been submitted and would forward them to the owner when received from the Canada Revenue Agency. The council confirmed that they had already provided the financial reports at the annual general meeting.

27. At the Dec. 2015 hearing, the owner requested a number of dedicated hearings, noted in the following paragraph. The council responded to each request, but first provided a general response. The council stated:

    a. The SPA provides that any owner or tenant may request a hearing at a strata council meeting;

    b. A hearing is defined as an opportunity to be heard in person;

c. A hearing is not an appropriate format for discussion between strata owners, as strata owners are only allowed to participate as observers within the hearing;

d. A hearing is not an appropriate venue for making decisions affecting the broader strata as a whole, as there is no opportunity for motions or votes; only decisions by council members that are made after the hearing;

e. In contrast, a ‘special general meeting’ can be used as a forum to discuss issues of concern and to resolve the matters appropriately.

28. At the Dec. 2015 hearing the owner requested strata dedicated hearings to be led by council and attended by owners:

a. A hearing within 30 days on all known versions of the strata bylaws.

b. A hearing on appreciating asset and field care options for the strata within 30 days.

c. A hearing within 30 days to assess / review / train members on strata financials, including excel spreadsheet building, paper ledger, bank set up and tax forms.

d. A hearing within 30 days to set in place a new strata owner welcome statement, a vision statement, and/or an executive charter, and a president pledge for present and /future presidents to abide by and respect.

e. A hearing within 30 days for all members to discuss, agree, to set in place a council meeting just after the annual general meeting and mid-year, to establish minimum expectations and the essentials of such a meeting.

f. A hearing within 30 days to review strata plans, layout of drain system, distribution boxes, and put in place a tank inspection/box maintenance schedule, which was ad hoc.

g. A hearing within 30 days to review, assess using cloud storage, and info sharing options going forward.

29. In response to item 28(a), the council stated it had already committed to reviewing and updating the bylaws, for approval at the 2016 annual general meeting. This process was ongoing, and does not require a hearing. However, public input would be solicited prior to the annual general meeting, and the council would ensure that the owner had an opportunity to participate.

30. In response to items 28(b) – (d), the council stated these topics were unsuited for a hearing, but rather for a discussion at a special general meeting. To determine if there was interest, the council would propose to the owners that a meeting be held. If 20% of the membership expressed support for a meeting on this topic, a special general meeting would be held at a date to be decided.

31. In response to item 28(e), the council stated that, as previously noted, a hearing does not allow for discussion between owners or the passing of motions. The decision of if and when to hold council meetings rests with the current council members. However, this concern could be incorporated into the bylaws and/or could be raised at the 2016 annual general meeting as a motion to be voted upon by the membership.

32. In response to item 28(f), the council stated it had no indication that there were specific concerns regarding the field, tank, etc. They had consulted recently with septic field/plant technicians, the strata's insurance agents, and the CRD (Capital Regional District). They were not aware of any current issues that would necessitate a hearing or meeting. The council asked the owner to make them aware of any specific concern so that it might be dealt with.

33. In response to item 28(g), the council stated that the secretary, Sean Rodman, had already indicated that he was exploring this as an option during the 2015-2016 year, and would be pleased to update the owner on his progress.

34. Once the owner made his requests at the Dec. 2015 hearing, he stated that the council was shoddy, sloppy, dodgy and/or slippery disrespecting when it came to embracing input, open dialogue, accepting and correcting mistakes made, AGM protocol, and record retention. The owner then asked a number of questions to be answered by the president Doug Crockett and the past president Frank Lyne.

35. At the Dec. 2015 hearing, the owner asked the council whether they ever thought that an entrenching mindset, such a lackluster understanding of the role they volunteered for and accepted to take on would not come back to bite them as they continued their diatribe, baseless accusations against the owner? Did they prefer to continue their documented executive non-compliance, annual general meeting protocol missteps, their overall 'kick the can' mindset and refusal to add items to the annual general meeting agenda? Did they prefer creating a culture of fear – of cuffed hands – an executive way or the highway – a near 'putinesque' message to the owner and other owners?

36. At the Dec. 2015 hearing, the council stated these items expressed dissatisfaction with the past and current leadership of the strata. However, the items did not request a specific decision from the council. The council wished to highlight that, in general, no other lot owners had expressed their discontent with the leadership. The council felt it was also important to note that according to the SPA (22(1)) [actually it is standard bylaw 22(1)] "a council member who acts honestly and in good faith is not personally liable because of anything done or omitted in the exercise or intended exercise of any power or the performance or intended performance of any duty of the council." The council stated that approaching issues in the way that the owner expressed might have a chilling effect on the participation of strata owners on future councils, and council encouraged a collaborative, rather than confrontational, approach to working with council going forward.

37. At the Dec. 2015 hearing, the owner asked council members why they saw fit to breakdown all the protocol steps in place regarding annual general meetings, of record retention, of all common property maintenance? The council stated that

where there had been documented mistakes (for example with meeting protocol and record-keeping) and the council had been made aware of them, the council had consistently corrected them. The council stated it was still following the protocols as set out by the SPA and the strata bylaws.

38. At the Dec. 2015 hearing, the owner asked why the past council secretary thought he could destroy and not retain the recording made of the 2015 annual general meeting? Why did he seemingly rent a digital voice recorder not buy one outright? Why did he not realize this recording was owned by the strata and useful to ensure the new secretary could more accurately characterize the minutes made, especially in light of those shared/offered up post annual general meeting by the same council secretary in the hope they would be passed and formally accepted at 2016 annual general meeting without being challenged. The council stated that it had committed to making any official recording available to the owners.

39. At the Dec. 2015 hearing, the owner asked why the present council secretary had been instructed to relay an updated version of the 2013 annual general meeting minutes to the owner, that now included a copy of the presentation the owner made (and had to write up himself) without indicating or confirming this update was also being distributed to all owners and asking them to delete all previous 2013 annual general meeting minutes? The council stated the updated 2013 annual general meeting minutes were available to all members at their request at any time, and would be made available again at the next annual general meeting.

40. At the Dec. 2015 hearing, the owner asked why 2013-2015 annual general meeting minutes were never corrected prior when mistakes were evident? Why were no voting cards prepared and why did the owner have to flag it in front of everyone in 2015? The council stated the annual general meeting had been corrected. Voting cards were not prepared, and this was acknowledged as an oversight. The council committed to ensuring that voting cards would be available at all future annual general meetings.

41. At the Dec. 2015 hearing, the owner asked whether the annual general meetings of 2013 and 2014 met the SPA regulations and whether they were null and void? The council stated that upon review, the council believed the annual general meetings of 2013 and 2014 were valid under the SPA.

42. At the Dec. 2015 hearing, the owner asked the council to comment on inferences from the early 2015 annual general meeting discussions that council were not unanimous on a vote and that could not happen since Lot 3 reps only had one vote [it appears that both the husband and wife owners were on council]. The council stated that it would review and revisit if necessary prior to the 2016 annual general meeting.

43. At the Dec. 2015 hearing, the owner asked if the CRD tank certificate been processed for 2015 and, if not, why not? The council stated the CRD certificate is updated annually as part of the bimonthly inspections conducted by Coast Environmental. As part of this schedule, Coast Environmental would file the 2015 certificate by the end of January 2016. A call to CRD on January 4, 2016 confirmed that this was normal practice and that the strata was considered in compliance. Council stated they would be happy to provide the owner with a copy of the certificate, if requested.

44. At the Dec. 2015 hearing, the owner commented that many field care cost mitigation ideas have been relayed and asked if the council had discussed any of these. The council stated that cost mitigation was an ongoing interest of the council, and had been raised in the past at annual general meetings. If the council felt there was an urgent need to discuss any of these options, the owners would be canvassed for a meeting. Otherwise, this issue would be revisited at the 2016 annual general meeting.

45. At the Dec. 2015 hearing, the owner provided a closing statement. He referred to a breakdown of credibility; a slapstick, careless, off the cliff/get someone else to do it mentality. The owner accused council of being too eager to hire contractors for heavy lift help; trimming items from the depreciation report while choosing not to

do any work on improving dialogue; and not sharing ideas. The owner addressed the owners generally stating that they should support his various attempts to get certain council members to correct out and stop their stubborn entrenched push back on so many levels, to those who kept numb, sat on the sidelines and those who chose to support the council. He stated it was time to get a backbone, sit up, and reach for that moral compass reset button. It was not the time for waffling, for quiet muted dog wailing conversations. It was time instead to own up for the gross wrongs committed, for the time and energy spent and opportunities wasted.

46. Doug Crockett, council president in December 2015, provided an email dated April 28, 2017. He stated that at the hearing the owner, after demanding eight more hearings within a 30 day period to address each of his individual complaints, finished with the aside, “You’re all going to be really busy.”

47. I have spent a significant amount of this review of the evidence outlining the requests made and the questions asked by the owner at the Dec. 2015 hearing, and the answers given and the decision made by the council within 7 days of that hearing.

48. I have done so to acknowledge that I appreciate the time spent by the council answering a multitude of concerns of the owner in January 2016. Notwithstanding the response of the strata, the owner filed this claim with the tribunal alleging, among other things, that hearings requested in October and November 2016 have not been held, reprimands of individual council members need to be ordered, an apology needs to be delivered, two council members must attend a VISAO workshop, and a meeting of the council be dedicated to reading the SPA and the strata bylaws.

49. A great deal of evidence has been presented by the owner to support his dissatisfaction with the governance of the strata and his claims for relief. The strata has also presented a great deal of evidence to support its argument that the owner has been unreasonable and that council has met its standard of care.

50. In the Dec. 2015 hearing, the owner addressed the owners collectively to address the gross wrongs committed by the strata. As is often the case in a small strata corporation, a lone voice is the loudest. It is not the voice of the majority, and of course the governance of a strata corporation is based upon democracy.

51. The majority did give evidence. Ken Dalzell, the owner of strata lot 1, is the authorized representative of the strata. The owner owns strata lot 2. Each of the owners of strata lots 3 – 14 inclusive gave evidence by email in April 2017. They all supported the past and present councils.

    a. One owner described the conduct of the owner to be never ending demands, intimidation and belittling of council members that had created a toxic environment.

    b. One owner stated he had never seen such poor conduct and lack of common decency exhibited by the owner. He stated a concern that in the future fielding a council would be difficult due to the owner's rudeness siege of old grievances.

    c. One owner stated that the owner's increased campaign of harassment, innuendo and intimidation was an effort to force his opinion on the rest of the strata. This dispute claim was the latest attempt and should be dismissed as frivolous and unnecessary and the strata membership exonerated.

    d. One owner stated that the disruptions caused by the owner the past several years are alarming to him and has made him extremely uneasy.

    e. One owner stated over the last 4-5 years the owner has been very disruptive both verbally and by email to each council and the neighbours. It has caused many heart aches and has been time consuming dealing with continuous email dialogue brought up by this strata member. Now the strata has problems filling council each year as no one wants to run and be monopolized with the disgruntled owner.

f. One owner stated he has witnessed the owner hijacking the strata annual general meetings to push his agenda, but he has had no success in rallying anyone to his causes. One of the owner's more unreasonable demands was to nullify a number of past annual general meetings due to the lack of voting cards (which were ultimately distributed when it was pointed out). It is my opinion that the owner's overwhelming sense of self-importance and arrogance have been determining factors in the morale of the strata and have brought the strata to the brink of not being able to seat a council, as members are wary of becoming his target.

POSITION OF THE PARTIES

52. The owner argues that the following evidence supports his position that the council has not followed the SPA and council members have a disjointed appreciation of the SPA and the strata bylaws, even after the owner has "flagged" many violations:

a. The extended behavioral pattern by councils from 2011 to the present day consists of members volunteering, voted onto council, and then ignoring basic/minimum expected knowledge of the SPA, the strata's bylaws, even basic prior property maintenance schedules;

b. The main disputed December 2014 – December 2016 period resulted in no voting cards at annual general meetings, no council meetings being held, no open discussion on future field use options, no free/open transparent dialogue at requested hearings where actions on errors could be quickly addressed/reset, no evidence of tax form submittals, no access to basic strata owned records, inaccurate annual general meetings minutes, destruction of digital recordings prior to draft annual general meeting minutes being circulated and no evidence of council member inspection/maintenance schedules being followed for the strata's tank and other jointly owned properties, or even delegation of same to a non-council member with the relevant knowledge;

c. A “general all up review” of the SPA and attendance at a VISOA (Vancouver Island Strata Owners Association) workshop is essential and the most cost effective reset option for new council members before or at the start of their term – essential in light of so many errors, missteps, the reactionary mindset and hearing requests in October and November 2016 being denied;

d. A requested letter of apology be provided by the council to the owner due to the “heal in the dirt” stance of council.

53. The owner argues that due to the numerous council violations of the SPA and the strata’s bylaws, the tribunal should order that the strata contact all owners acknowledging the violations that occurred, seek approval for the council minutes, agree on corrections, share the corrected versions and issue a checklist to avoid a repeat.

54. The owner argues that the tribunal should order that the strata issue letters of reprimand to Norm Cress and Doug Crockett, council members.

55. The strata states that it has a history of holding periodic council meetings or special general meetings in addition to the required annual general meetings. The strata states it has not had council meetings during the last few years due to the owner using council meetings to submit a barrage of criticism toward council members. There have been special general meetings and electronic votes, as permitted by the bylaws. The strata gave examples of special general meetings held May 28, 2013 and March 18, 2014 and an electronic vote December 3, 2016 with respect to a treatment plant repair. These examples were given to show that the past and present councils were managing strata business to an acceptable standard based on what would be reasonably expected for a small bare land strata of 14 single family houses.

56. The council admits that it should have issued voting cards at general meetings and now does so. The council agreed to revisit electing 2 council members from the same strata lot. Two council members from the same strata lot has not occurred after the 2015 annual general meeting.

ANALYSIS

Bylaws

57. As noted earlier, bylaw amendments were filed in the land title office. The first set was filed October 16, 1996 under No. EK116018. At this time the *Condominium Act* was in existence. These filed bylaws were in addition to the Part 5 bylaws mandated by the *Condominium Act*. The SPA was enacted July 1, 2000 and SPA Regulation 17.11 addressed the transition to the SPA standard bylaws effective January 1, 2002. The second set of bylaws was filed October 10, 2014 under No. CA4042071. This filing is restricted to electronic voting at strata meetings. They were adopted and filed after the SPA was enacted. Based on my review of the filed bylaws and SPA Regulation 17.11, I find the strata's bylaws generally comprise the SPA standard bylaws and the two sets of filed bylaws.

58. Regulation 17.11 provides that the SPA standard bylaws would apply except to the extent that if the strata had filed bylaws before January 1, 2002 that were not inconsistent with the SPA, those bylaws would prevail. The 1996 and 2014 filed bylaws are not inconsistent with the SPA and prevail over any standard bylaws with respect to the same issue. The bylaws "package" introduced in evidence includes the bylaws filed by the strata and the SPA standard bylaws. This situation results in ambiguity (for example with respect to pets). It also results in inadvertent application since the strata is a bare land strata.

59. For example, standard bylaw 8(d) states that the strata is responsible for the repair and maintenance of the exterior of a building, the structure of a building, doors and windows of a building and so on. Each building in a bare land strata is located completely on the strata lot as noted on the strata plans. It is highly unlikely that the strata in the past has been responsible for the repair and maintenance of each owner's single family house. Regardless, since the filed bylaws do not address responsibility, the standard bylaw states the strata is responsible for the repair and maintenance of each owner's single house.

Duty of Council Members

60. Section 26 of the SPA states the council must exercise the powers and perform the duties of the strata corporation, including the enforcement of bylaws. Section 31 of the SPA states that in exercising the powers and performing the duties of the strata corporation, each council member must act honestly and in good faith with a view to the best interests of the strata corporation, and to exercise the care, diligence and skill of a reasonably prudent person in comparable circumstances. Section 3 of the SPA states that the strata corporation is responsible for managing and administering the common property and common assets of the strata corporation for the benefit of the owners.

61. I find that each council member, with respect to the dispute before the tribunal, has (1) exercised the powers and performed the duties of the strata honestly and in good faith with a view to the best interests of the strata, and (2) exercised the care, diligence and skill of a reasonably prudent person in comparable circumstances.

62. Though not binding on me, I accept the conclusion the tribunal reached in *Mellor v. The Owners Strata Plan KAS 463*, 2018 BCCRT 1, given the tribunal's mandate includes recognition of the ongoing relationship between the parties, the following comments were warranted. Strata councils are made up of volunteers, and mistakes will be made. Mistakes have been made in the present dispute; I will address those mistakes. However, within reason, some latitude is justified what scrutinizing the conduct of council. The council does not have the benefit of a management company which might suggest less latitude is necessary.

Enforcement of Bylaws

63. The owner has alleged that the council has not enforced its bylaws because a strata lot resident has two dogs. Standard bylaw 3(4)(d) states an owner must not keep more than one cat or one dog. Strata's filed bylaw 6 states that "no animals, birds, or livestock excepting only the usual household pets shall be kept on the said lands". Bylaw 6 prevails over standard bylaw 3(4)(d) because it was filed before the SPA was enacted and is not inconsistent with the SPA. I find that

"household pets" comprises more than one dog; an owner with two dogs is not in contravention of the bylaws.

64. I recommend that the strata, through its council, seek professional advice to review the strata's present bylaws with a view to amending the strata's bylaws to enable the governance of the strata to be more consistent and realistic for a bare land strata. I note that the minutes of the June 29, 2017 council meeting refer to a review of draft bylaws.

Number of Council Meetings

65. I acknowledge that the strata is a relatively small bare land strata. There is no provision in the SPA that addresses a minimum number of council meetings that must be held. However, there are provisions of the SPA that require council input. For example, section 46(1) of the SPA states that the council determines the agenda of an annual or special general meeting (section 46(2) of the SPA states that 20% of the owners can propose additional agenda items). Section 4 of the SPA states that the powers and duties of the strata corporation must be exercised and performed by the council. Section 40(1) states that the strata corporation must hold annual general meetings. A general meeting must therefore be called by the council. Council must meet to call the general meeting and draft the agenda.

66. Section 103 of the SPA states a strata corporation must prepare a budget to be voted upon at the annual general meeting and it must be distributed with the notice. A budget cannot be drafted and distributed with a notice without a council meeting and drafting the budget and notice. It can be the same meeting as noted in preceding paragraph.

67. Standard bylaw 13(1) states that council must elect officers in its first meeting after each annual general meeting. I acknowledge that standard bylaw 17(1) states that council can hold a meeting by email. However, a council meeting held by email is still subject to the preparation of minutes, as per paragraph 23 of *Kayne v. The Owners, Strata Plan LMS 2374*, 2007 BCSC 1610 (CanLII). There are no minutes of any council meeting of the strata held in 2014, 2015 and 2016.

68. The council submits that it has not held council meetings because the owner uses council meetings as reason to submit a barrage of criticism toward council members. I understand that concern. The owner attended the May 12, 2013 council meeting (the last one until the Dec. 2015 hearing). The owner stated that general meetings were taking too long due to more than one person being present for every strata lot. His opinion was that even though there is only one vote per lot, having more than one person expanded the discussion unnecessarily. An owner, tenant or occupant is entitled to attend an annual general meeting. The owner stated that it was his intent to raise 33 other issues at the next annual general meeting or with the next council.

69. Standard bylaw 17(3) states owners may attend council meetings as observers. Standard bylaw 14(4) states that the council must inform owners about a council meeting as soon as feasible after the meeting has been called. Council has options. Council can ensure that any owner, including the owner, is simply an observer at the council meeting (see paragraph 93 of my decision). An observer is entitled to observe. .An observer is not entitled to participate in any discussion, make any observations or ask any questions. Council cannot decide to not hold any council meetings.

70. I find that the strata has in the past contravened the SPA by not holding sufficient council meetings in order to govern the strata per the SPA. I am not surprised due to the conduct of the owner at those meetings. Regardless, I am confident that the council will in the future hold sufficient meetings to make decisions it is required to make, particularly in advance of the annual general meeting.

Representatives on Council

71. The owner referred in the Dec. 2015 hearing to the impossibility of a unanimous vote by council because lot 3 representatives should have only one vote. The minutes of the council meetings held in 2011, 2012 and 2013 reflect that in attendance were Christine Cress as the treasurer and Norman Cress as the secretary. Pursuant to the minutes of the annual general meeting held September 22, 2015, Mr. Cress did not stand for council. Mr. and Mrs. Cress jointly own strata

lot 3. Section 29(2) of the SPA states that if a strata lot is owned by more than one owner, only one owner of the strata lot may be on council, unless all the owners are on council. Since all the owners are not on council, both Mr. and Mrs. Cress on council is a contravention of the SPA. I recognize that having sufficient number of owners standing for election to council can be challenging, and that there are owners in the strata that are reluctant to serve due to the conduct of the owner. Regardless, it is essential that the strata operate in compliance with the provisions of the SPA and the strata's bylaws.

72. I find that the strata contravened the SPA by electing two owners of the same strata lot to the council. This contravention has been rectified and appears to not have occurred since September 2015.

Voting Cards

73. Standard bylaw 27(1) states that at annual or special meetings, voting cards must be issued to eligible voters. The owner argues the strata has contravened the strata's bylaws. The strata accepted the bylaw was contravened and has rectified the contravention. Voting cards are now issued at each general meeting. I find that this contravention is minor in nature, especially in view of the strata comprising only 14 lots.

Access to Strata Records

74. The owner argues that all strata records must be produced. That is not correct. Section 35 of the SPA states what records the strata must prepare and retain. Strata Property Regulation 4.1 states the length of time the documents and records must be retained by the strata. Section 36 of the SPA states which of those records must be produced upon a request being made. The strata provided the tax documents to the owner once they had been received from the Canada Revenue Agency. The strata provided copies of minutes of council meetings and general meetings to all owners. The strata provided copies of the bylaws to the owner. If copies have not been provided within the one week deadline (deadline is

one week for bylaws and rules, 2 weeks otherwise), I find that failure minor in nature. I find that the owner is not entitled to all strata records.

75. The tribunal has issued a number of decisions on records and documents and reasonable owner requests for production. I have reviewed those decisions in order to find that the owner is not entitled to all strata records. Those decisions include *Pritchard v. The Owners, Strata Plan VIS3743*, 2017 BCCRT 69, *Link et al v. The Owners, Strata Plan KAS 828*, 2017 BCCRT 128 and *Mellor v. The Owners, Strata Plan KAS 463*, 2018 BCCRT 1.

Minutes of General Meetings

76. The owner argues that the minutes of general meetings have been inaccurate. The council prepared a draft of the minutes for the 2016 annual general meeting and circulated the draft to all owners within one month of the annual general meeting having been held. There is no provision in the SPA or the strata's bylaws that requires the minutes of general meetings to be circulated to the owners. Standard bylaw 28(f) requires that the minutes from the last annual or special general meeting be approved at a general meeting. Standard bylaw 19 requires the strata to inform owners of council meeting minutes within 2 weeks of the council meeting. Both these bylaws apply to the strata.

77. The owner has accused the council of not being transparent and of being shoddy, inept, sloppy, dodgy, slippery and disrespecting. I find a council circulating to all owners a draft set of the minutes of an annual general meeting to be transparent and respectful. I find that this characterization by the owner of the council, together with the lengthy and highly critical emails relayed by the owner, is an attempt by the owner to force himself upon the council to be the governor of the strata. During the past 5 years, the owner has been unable to garner any support of other owners to be elected to the council.

78. The owner argues that the destruction of the digital recording of the 2015 annual general meeting prior to the draft minutes being circulated to be a violation of the SPA and the strata's bylaws. There is no requirement to circulate draft minutes of

general meetings. There is no requirement in the SPA or the strata's bylaws to digitally record the proceedings in order to develop minutes. I find that the strata has not contravened the SPA or the strata's bylaws by destroying digital recordings of meetings.

Sewage Treatment Tank

79. I have reviewed the professional tank inspection reports. I have reviewed numerous emails exchanged between the owner and the council with respect to the sewage treatment tank inspections. The owner argues that there is no evidence of council member inspection/maintenance schedules being followed for the strata's tank and other jointly owned properties, or even delegation of same to a non-council member with the relevant knowledge. I find that the retention of professional service companies is sufficient, prudent and responsible.

80. The owner made numerous demands of the council with respect to the sewage treatment tank. I find that the council's response to those demands was reasonable. The sewage treatment tank is common property. It is managed by the council, per section 3 of the SPA. If the owner wished the strata to address the tank in a different fashion the owner, with a 20% requisition of owners per section 43 of the SPA, could have initiated a majority resolution at an annual general meeting to direct the council in its exercise of its powers and performance of its duties (section 27(1) of the SPA). The owner did not initiate that process and it is very likely, based upon the evidence of each strata lot owner), that such an attempt would have failed.

81. The conduct of the council addressing the dispute with respect to the sewage treatment tank is an example of the council properly discharging its standard of care as required under section 31 of the SPA.

Hearings Requested

82. The council refused to grant the hearings requested by the owner October 14, 2016 and November 14, 2016. The council states that the requests were refused because the owner asked to discuss a number of strata wide issues not specific to

him. Section 34.1(1) of the SPA states an owner may request a hearing at a council meeting by stating in writing the reason for the request. Section 34.1(2) states that upon receipt of such a request the council must hold a council meeting to hear the application within 4 weeks after the request.

83. I have reviewed decisions of the tribunal with respect to section 34.1 of the SPA. I have not been able to find any decisions of the BC courts that have addressed the application of section 34.1 of the SPA. The tribunal has ordered that a council must hold a hearing per section 34.1 if an owner or tenant requests a hearing.

- *Smiley v. The Residential Section of The Owners, Strata Plan VIS 1921*, 2017 BCCRT 75
- *Chaveefa v. The Owners, Strata Plan NW 3353*, 2017 BCCRT 101
- *K.Y. v. The Owners, Strata Plan LMS XXXX*, 2017 BCCRT 102

Each of these decisions involved a dispute in which the applicant had contravened the SPA or bylaws and was being penalized. None of the decisions dealt with an applicant's reason for requesting a hearing being to mandate the governance of the strata corporation involved.

84. The owner argues that if a member, in good standing, requests a hearing pertaining to <u>any</u> strata issue (emphasis added) the SPA is clear; the council must grant the request as it is not for the council <u>to conclude prior to the hearing</u> (original emphasis) the full nature of the hearing evidence, concerns or outcome until the hearing concludes. I disagree.

85. Section 34.1 of the SPA states:

> *(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 application 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.

86. Strata Property Regulation 4.01 states *"For the purposes of section 34.1 of the Act,* ***"hearing"*** *means an opportunity to be heard in person at a council meeting"*.

87. It is useful to canvass the origins of section 34.1 of the SPA. It came into force on December 10, 2009. Prior to that, the identical wording was standard bylaw 15. By enacting the provision as part of the SPA, the Legislature ensured that a strata corporation could not repeal the bylaw and deny an owner or tenant the right to a hearing.

88. The previous standard bylaw 15 was not part of the *Condominium Act*. It became a standard bylaw January 1, 2002, likely due to the case *Landmark Monterey Condominium Council and Bayside Property Services Ltd. v. von Como*, [1984] B.C.J. No. 838. Essentially that decision found that a strata corporation could not ignore the fundamental rules of natural justice. A council could not fine owners without giving owners an opportunity to defend themselves. The court found that the strata corporation's authority was administrative in nature. The court stated at paragraph 15 *"It is my view that a fine should not have been levied on the basis of assumptions or complaints and the respondent should have been notified of the meeting on September 7th and have been given the opportunity to attend and be heard."*

89. Section 135 of the SPA states that before imposing a fine against a person, requiring a person to pay the costs of remedying a contravention or denying a person the use of a recreational facility, the strata must give the person particulars of the alleged complaint and a reasonable opportunity to answer the complaint, including a hearing if requested by the owner or tenant.

90. The modern approach to statutory interpretation in Canada has been stated by the Supreme Court of Canada. As noted in *The Owners, Strata Plan LMS1495 v. 0753874 B.C. Ltd.*, 2015 BCSC 2124 at paragraph 36, "*Today there is only one principle or approach; namely, the words of an Act are to be read in their entire*

context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."

91. I have read the SPA in its entire context, including section 27(1) (subject to the direction of a majority of the owners), section 34.1, section 43, section 46(1), section 135, and all the sections consistent with the concept that council governs the strata. I find that section 34.1 does not operate to require the council to grant the hearings requested on October 14, 2016 and November 14, 2016. I find there can be circumstances when a request for a hearing can be denied. Circumstances exist in the present dispute. They include the following:

    a. The owner has not been fined, nor has he been penalized;

    b. The owner has made previous requests and was granted a hearing;

    c. The owner outlined what demands he was making, not simply the reason for the hearing request;

    d. The owner stated he would be making further demands;

    e. The owner wished to discuss a number of strata wide governance issues not specific to him; and

    f. The reasons for the requests were with respect to the governance of the strata and would be more properly addressed at a meeting of the owners, or by majority direction of the owners.

92. A hearing is a right to be heard, not a forum to make demands with respect to governance of the strata invoking discussion and rebuttal. I find further support in that concept from the decision in *Panageos v. The Owners, Strata Plan VIS4023*, Oral Reasons for Judgment rendered May 6, 2014, Docket 11-4706, Victoria Registry of the BCSC. This decision involved a hearing that was held, but very quickly became a shouting match, was abruptly terminated and the owner banned from future council meetings.

93. I refer to paragraph 34 of the Strata Plan VIS4023 decision that states*: "[The strata council] are entitled to govern their own processes. While I might not agree with the decision they took, I cannot disagree that they had the right to take that decision. I will say this: No member, no owner, no one else, has any right to attend a meeting of strata council and disrupt the business of strata council. It is the purview of the right of the chair to run the meeting. That is what democracy is all about."*

94. I have not referred to the decision in Strata Plan VIS4023 to compare its facts with the present dispute. I refer to the decision to reinforce the concept that the elected council governs the strata, not an individual owner. That is what democracy is all about. If the owners are of the view the current council members are governing improperly, then the owners can ensure the council members are not re-elected at the next annual general meeting.

95. Section 43 states "*Persons holding at least 20% of the strata corporation's votes may, by written demand, require the strata corporation hold a special general meeting to consider a resolution or other matter specified in the demand"* (emphasis added). The strata argued that the council refused the request for a hearing because the owner wished to discuss a number of strata wide issues not specific to him.

96. If the owner wishes to dictate governance to the council, the owner has the opportunity to attempt to do that by requisitioning a meeting per section 43 of the SPA. The owner must garner support; essentially he needs himself and the owners of two other strata lots to accomplish having his demands heard at a special general meeting (section 43 of the SPA) or be added as an agenda item to an annual general meeting or a special general meeting (section 46 of the SPA).

97. I find that a reasonably prudent council would make the same refusal to hold hearings in comparable circumstances. I find that the council has not contravened section 34.1 of the SPA by refusing to hold the hearings requested by the owner October 14, 2016 and November 14, 2016.

98. I refer to the tribunal decision in *Mellor v. The Owners, Strata Plan KAS 463*, 2018 BCCRT 1. This is also a case that addresses sections of the SPA that appear on their face to be mandatory provisions. This decision did not address section 34.1 of the SPA; it addressed sections 35 and 36 of the SPA. Those sections deal with collection and preparation of documents and records, and the production of those documents and records upon a demand made by an owner. The tribunal found Ms. Mellor's demands to be unreasonable and vexatious. The tribunal found that the spirit of the SPA was to recognize the democratic nature of strata living, with the result that the strata must act in the best interests of all owners. Vexatious requests for documents and records unduly burden the strata, to the detriment of all the other owners. The tribunal found that it was implicit in section 36 of the SPA that requests for records must be reasonable.

99. I am not stating that the conduct of the owner in the present case is vexatious. I do find his conduct and the majority of his demands to be unreasonable. I do not need to follow the *Mellor* decision. However, I find that decision persuasive with respect to the interpretation of what appear to be mandatory provisions in the SPA. There can be situations in which reasonableness must prevail, whether it is granting a hearing or producing strata records.

100. I acknowledge that the process of the tribunal requires an owner or tenant to request a hearing before the council of a strata corporation unless the tribunal waives that requirement. That does not mean any request for a hearing must be granted. If an owner's or tenant's request for a hearing is refused, that is likely sufficient.

DECISIONS

101. I find the strata has made mistakes and contravened some provisions of the SPA (2 owners on council from the same strata lot and failing to hold council meetings to call general meetings) and the strata's bylaws (voting cards). I reject the significant majority of the alleged claims of the owner.

102. I make no order with respect to the minimum number of council meetings that must be held. I simply order that where the SPA invokes a duty of the strata or the council, the council must perform those duties. In order to perform some of those duties, a council meeting is required.

103. I make no order that no more than one owner from the same strata lot can be on council. That is a provision of the SPA. I make no order that voting cards must be issued for general meetings. That is a requirement of the strata's bylaws. Those mistakes of the strata have been rectified.

104. I dismiss the balance of the orders requested by the owner. I find that each council member, with respect to the dispute before the tribunal, has (1) exercised the powers and performed the duties of the strata honestly and in good faith with a view to the best interests of the strata, and (2) exercised the care, diligence and skill of a reasonably prudent person in comparable circumstances. I reject any suggestion that letters of reprimand or a letter of apology are appropriate.

105. Since the significant majority of the orders requested by the owner have been dismissed, I dismiss the owner's claim that the strata reimburse the owner $225 in tribunal fees.

ORDERS

106. I make the following orders:

    a. I order that the strata hold council meetings when appropriate to ensure the performance of duties of the strata corporation. I order one council meeting per year must be held prior to the convening of an annual general meeting. I make no order with respect to the minimum number of council meetings to be held annually.

    b. I order the remainder of the owner's requests for orders dismissed.

107. Under section 49 of the Act, and tribunal rules 14 and 15, 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. Since there has been mixed success, mostly in favour of the strata, I order that the strata is not responsible for payment of tribunal fees paid by the owner.

108. 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 56.3(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.

109. 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.

Patrick Williams, Tribunal Member