



Approved Minutes for The Peaks Board of Directors Meeting  
February 23, 2019 10:00 AM  
Location: Radium Plaza, Unit 8

a) **Meeting Convened – 10:04 am**

Members in attendance

Joanne Buckley

Purnima Gosavi

Terry Larsen

Wayne Loustel (by phone)

Kelly McGovern (by phone)

François Robert

Carla Simoes (by phone)

b) **Approval of Agenda**

Moved by: Terry                      Seconded by: Carla

MOTION: Approve the Agenda as presented.

For: 7              Against: 0 (Carried.)

c) **Approval of Minutes of Previous Board of Directors Meeting**

A board decision was made by email as per Bylaw 31. The minutes were approved on January 31, 2019 with a (7 For - 0 Against) vote.

d) **New Business**

a) **Board Discussion; Director Code of Ethics:** Lead François

Review by all Board members of potential conflict of interest regarding current agenda.

b) **Lot 131:** *A board member left the meeting at this juncture due to possible conflict of interest.*

**ACTION:** The board received a letter via email from Lot 131 on February 9, 2019. The individual identified under item 4 is misidentified. Lot 131 owner identified the General Manager in his letter. This is incorrect.

No written apology will be provided as per Lot 131 owner's request and no reprimands will be provided to individuals as well.

No further action is needed.

c) **Financial review and budget:** Lead Carla

- Carla provided an update with respect to the audit of Fiscal Year 2018-2019 and budget preparation for Fiscal Year 2019-2020

**Break 11:46 am-11:55am**

d) **Canfor property adjacent to the Peaks**

An email was received from the *Protective Services*, The Village of Radium Hot Springs. The Village and Canfor are concerned about the parking of vehicles and trailers on the Canfor property. Canfor has asked that everything be removed by April 30.

**ACTION:** The board will inform the owners that they are not allowed to park vehicles and trailers in the area owned by Canfor. The Village has served notice that they may take action if owners continue to park on Canfor property. This will be mentioned in the newsletter and brought to owners' attention at the Annual General Meeting.

Joanne will contact the Village to determine if there is an alternative location for parking of trailers or additional oversized items.

e) **Snow removal**

An owner sent an email regarding the timing of snow removal. The owner's question is regarding whether we need to have the Caretaker shovelling the walk so early in the morning (around 5:30-6:30 am) as it causes a disturbance.

**ACTION:** It is important to recognize that we have owners who are heading to work early in the morning and need safe access to and from the building. The General Manager will mention the concern to the Caretaker so that he can be sensitive to noise early in the morning, however, safety will be given priority over convenience when it comes to ice and snow removal. The Caretaker will continue to avoid use of motorized or power tools at early hours and use hand tools for snow and ice removal unless absolutely necessary.

f) **Bylaws enforcement:** Lead François

**Lot 13:** There was a vehicle without handicapped signage parked in a handicapped spot. The board made the decision to have the vehicle towed. There was an encounter in the parking area between the owner of the vehicle and the General Manager. A Notice of

Complaint was sent in mid-December. We received a letter of response on February 2, 2019.

**ACTION:** The Board reviewed the decision and determined that proper protocol was used by the Strata Corp. No further action is required.

**Lot 142: BACKGROUND:** Damage to limited common property (unit door) and nuisance complaint.

**ACTION:** The owners have been contacted as of February 18. The front door code was changed for that unit (Birch units each have an individual code for access to the building). A notice of complaint will be sent that allegedly the nuisance bylaw was broken. The General Manager has ordered a replacement door for the unit. The installation will take place upon consultation with the owners and the Strata Corp.

**MOTION:** A notice of complaint will be sent to the owners of Lot 142 alleging that the nuisance bylaws (Schedule of Standard Bylaws 3(1)a, 3(1)b, and 3(2)) have been broken.

Moved by: Purnima                      Seconded by: Kelly

For: 7                      Against: 0                      (Carried.)

g) **Rules:** Lead François

**#1)** The CRT tribunal member decided that the 2005 awning rule is still valid. Paragraph 21 in the CRT final decision gives more details as to what the tribunal member looked at when the 2005 awning rule was considered in the decision. The board used paragraph 21 in formalizing the 2005 awning rule (see Attachment #1: Awning Rule). The board also used information submitted by lot 45 owners at the January 4, 2018 hearing regarding the 2005 awning rule.

**MOTION:** The Board affirms the rule presented by Lot 45 on January 4, 2018 is the awning rule.

Moved by: Terry                      Seconded by: Carla

For: 7                      Against: 0                      (Carried.)

**ACTION:** The board will suspend decisions on any new alterations to the building envelope made by any owner until the end of the March 30, 2019 Annual General Meeting.

**MOTION:** The board will present a rule to the owners for a vote at the Annual General Meeting with respect to protecting the building envelope's integrity.

Moved by: François                      Seconded by: Purnima

For: 7                      Against: 0                      (Carried.)

h) **Proposed review of bylaws and possible addition of a new bylaw:** Lead Terry

**ACTION:** The board will use email to vote on which bylaws will be presented at the next Annual General Meeting. The board will seek legal advice on possible bylaws and if received in time, will include those bylaws in the AGM package.

i) **Review of critical activities regarding upcoming March 30 AGM:** Lead François

**ITEMS:**

- Financial Statement and financial report (Carla)
- 2019-2020 Budget (Funds should be proposed to deal with the foundation issue. This issue should be included as part of the building enclosure condition assessment. Carla and François will work together to figure out the amount needed for the contingency report. Carla and Joanne will continue to work on the budget.)
- Bylaw revisions (Joanne & Terry)
- Proxy allocation (if Board is appointed)

**MOTION:** If a proxy is appointed to the board, the proxies will be distributed evenly to the board members using alphabetical order of last names.

Moved by: Joanne                      Seconded: Carla

For: 7                      Against: 0                      (Carried.)

- Establish number of Directors and election of Directors  
**ACTION:** The board recommends that seven (7) directors be established for the 2019/2020 year.
- Scrutineers  
**ACTION:** The board will put out a call for volunteers via the blog and newsletter, for 5 volunteers; three volunteers for entry at the doors and two volunteers to be scrutineers.  
\*\*We will try to introduce the current strata staff to the owners at the beginning of the meeting.\*\*
- Logistics (room setup, signing in, food, documents, printer)  
**ACTION:** Carla will procure a projector for use at the Annual General Meeting.  
Purnima will order refreshments via Big Horn Café.  
Board members will help with setup the night before the AGM
- Report to ownership  
**ACTION:** François & Kelly will prepare a report to ownership on the year's events.
- Possible motion regarding W205

**ACTION:** AGM 2018 draft minutes will include why we did not act on the 2018 AGM motion. The minutes will need to be amended on this item as well as the reverse stall parking. Joanne will work on the amendments and send to Kelly.

- Hot tub operation  
**ACTION:** Propose to put on the agenda for the next board.
- The Peaks Management  
**ACTION:** Summarize our current setup. The next board may want to explore other options for management and board compensation.
- Proposed implementation of Depreciation Report (Carla and François)
- Who plans to have his/her name stand for re-election?  
6 board members out of 7 are open to running for re-election. Final decisions have not been made.
- Other: Knowledge transfer from incoming and outgoing board members. How do we ensure that new board members are set up for success? How do we ensure outgoing board members

j) **Newsletter items people would like to add & possible Facebook:** Lead Kelly

Parking prohibited on Canfor property

Those interested in running for the Board of Directors

Volunteers for the AGM

General Bulletins for the AGM on:

- Addition of new bylaws
- Attendance or sending proxies
- Depreciation Report
- Budget

k) **Indemnification Agreement for Lot 43:** Lead François

**MOTION:** On behalf of the strata, an indemnification agreement will be finalized by two board members and will be delivered to the owner of Lot 43.

Moved by: Terry                      Seconded by: Wayne

For: 7                      Against: 0                      (Carried.)

Break from 2:25-2:34pm

l) **CRT update for Lot 45:** Lead François

*A board member left at this juncture due to a possible conflict of interest.*

- The CRT final decision was made on February 6, 2019. The final decision can be found at <https://decisions.civilresolutionbc.ca/crt/sd/en/362497/1/document.do>
- On behalf of the Owners of Strata Plan NES 2402, the Board complied with all orders contained in the CRT decision.

**COMPLETED ACTION:** The Strata paid on February 15, 2019 to the owners of Lot 45 \$225.00 for tribunal fees. The Strata also paid at the same time post-judgement interest as per the Court Order Interest Act and the owner's portion of dispute-related expenses. The \$100.00 related to fines was returned to the owners.

**IN PROGRESS:** Indemnification agreement.

**MOTION:** The Strata removes the fines and other enforcement action related to the retractable awning for lot 45. The Notices of Enforcement Action dated December 9, 2017 and January 13, 2018 are revoked.

Moved by: Francois                      Seconded by: Kelly  
For: 6                                      Against: 0                      (Carried.)

**MOTION:** As per the Civil Resolution Tribunal order, the Strata requires the owners to sign an indemnification agreement. On behalf of the Strata, an indemnification agreement was delivered within the 30 days of the CRT decision as required. The owners have raised concerns with respect to several points within the agreement. The board will take the owners' points under advisement and will make amendments, if appropriate, to the document. Upon receipt of the indemnification agreement, the owners will have 15 days to sign and return the document. The revised agreement will be delivered by two board members and will be delivered in person.

Moved by: Terry                      Seconded by: Carla  
For: 6                                      Against: 0                      (Carried.)

**MOTION:** The board approves the Summary Report 2019 BCCRT 149 Lot 45 (See Attachment #2).

Moved by: Kelly                      Seconded by: Purnima  
For: 6                                      Against: 0                      (Carried.)


A copy of the report is attached to the February 23rd, 2019 Board Minutes.

e) **Next Meeting:** March 3, 2019 at 1:00pm at Radium Plaza #8

f) **Motion to adjourn:** 3:13 pm

February 23, 2019 Board Minutes Approved by the Board on March 3, 2019.

Signatures:

  
François L. Robert  
The Peaks Board President

  
Kelly McGovern  
The Peaks Board Secretary

## **Attachment #1: Awning Rule**

(circa 2005 and 2007)

# **AWNINGS HAVE BEEN APPROVED FOR THE PEAKS!**

## **IF YOU ARE INTERESTED IN PURCHASING AN AWNING READ ON:**

With only 17 objections received, Council acts, on behalf of all owners, to allow installation of awnings on all balconies. Owners must apply in writing to Council, with permission coming from Council before proceeding. This awning allowance will be reviewed at the Peak's AGM in 2007.

Contacting Calgary Tent and Awning, purchasing and setting up installation is the responsibility of individual owners. For those interested, it would be prudent to order your awnings in the next few weeks so that they could be installed as soon as possible to get maximum benefit from them this summer.

**Purchase Information:** Calgary Tent  
and Awning (403) 273-8368

### **Pricing:**

- Sunstopper Lateral-Arm awning (for a Third Floor deck) installed at The Peaks in Radium is:

10'-6" wide X 8'-6" projecting outward – approximate cost: \$2045 plus GST  
Motors, remote controls, and electrical connection will be additional.

- Vertical blind, installed inside the columns on a first or second storey units is:

11'-9" wide X 8'-0" high – approximate cost: \$1145 plus GST.

- Costs may be reduced if a group of owners has awnings installed at the same time.

### **Approved Fabric**

The Sunbrella fabric approved for use on either mechanism (and the only color to be allowed for use at The Peaks) is #4960 Fern Graduated Stripe.

**... AND LET THE SUN SHINE!!!**

## Attachment #2:

### Summary Report 2019 BCCRT 149 LOT 45

#### CRT FINAL DECISION

The final decision was issued on February 6, 2019. The decision can be found at:

<https://decisions.civilresolutionbc.ca/crt/sd/en/362497/1/document.do>

#### COMPLIANCE WITH DECISION and ORDER

On behalf of the Owners of Strata Plan NES 2402, the Board complied with all orders contained in the CRT decision.

As recorded in the February 23<sup>rd</sup> BoD Minutes, the strata removed the fines and other enforcement action related to the retractable awning for strata lot 45.

On February 11, the strata initiated a bank transfer to the owners of lot 45 which included \$225.00 for tribunal fees, \$100.00 for the return of related fines (which was in trust), payment of \$0.35 for post-judgement interest, and the \$24.51 for owners portion of dispute-related expenses.

Within 30 days of the February 6, 2019 CRT decision, the strata will ask the owners of strata 45 to sign an indemnification agreement under the awning rule.

#### FINANCIAL COST TO STRATA OWNERS & REIMBURSEMENT TO OWNERS

A cost of \$2,919.60 to strata owners was incurred. Based on the CRT decision, the strata reimbursed \$349.86 to the lot 45 owners. The \$100.00 fine deposited by the owner (which was in trust) was returned to the owner.

#### OTHER INFORMATION PROVIDED BY CRT AS PART OF ITS NOTIFICATION OF DECISION

The CRT wrote the following in its email sent to both parties:

“After the CRT makes a decision, it **cannot** change it, except to clarify a point or correct an accidental mistake, such as a typo or math error.”

Paragraph 64 of the Civil Resolution Tribunal Act provides additional information on this topic

#### STRATA BOARD COMMENTS REGARDING ACCURACY OF SOME INFORMATION IN THE FINAL DECISION

#1) On behalf of the strata corporation, the Board accept and respect the CRT decision.

#2) If the strata corporation would had been allowed to request a change in the final decision, we would have made several suggestions including the following:

- i) In paragraph 8, it is mentioned by the CRT that “only one party responded”. We have proof that both parties responded to the CRT well within the time limit requested by the CRT.
- ii) In paragraph 58, the statement recorded differs from the information provided to the CRT through step #2 of the CRT Tribunal Decision Process. Information provided in step #2 by the strata regarding items mentioned under paragraph 58 was confirmed by the owners in step #3 of the CRT Tribunal Decision Process.



- iii) In paragraph 62 b, the amount paid by the owners of Lot 45 to the CRT was less than \$225.00. That said, the strata corporation is reimbursing lot 45 owners for the \$225.00 mentioned in paragraph 62 b.

#### REVIEW AND COMMENTS ON VARIOUS PARAGRAPHS RECORDED IN THE FINAL DECISION

- A) Prior to paragraph 33, the tribunal member wrote the following: "Was the strata's decision denying the awning significantly unfair?"

Paragraph 35 gives more details as to how the tribunal member approached this.

In part of paragraph 36, the tribunal member highlighted the following:

"I find that the 2005 rule remains in effect and the strata's stated reason for denying the owners' request of following due process when considering the owner's request goes against the valid rule."  
"I also find that the owners had an objectively reasonable expectation that the strata council would consider and vote on their request independently of other matters before the council at the same time."

The tribunal member reached the following conclusion: "Therefore, I conclude that the strata treated the owners in a significantly unfair manner".

#### BOARD OBSERVATION:

Rules: To the best of its ability, and based on all the rules available in Form B in the previous three years preceding the March 2018 AGM, the 2017-2018 BoD brought forward at the March 2018 AGM all the rules that were at that time recorded in Form B for a confirmation and ratification of existing rules by the owners. Due to a deficiency in tracking the rules by previous administrations, the 2005 awning rule was not part of the rules that were considered current in March 2018.

The tribunal member has now decided that the 2005 awning rule is still valid. On February 23<sup>rd</sup>, the Board will record the rule in its Board Minutes. The Board will also bring the 2005 awning rule up for a vote at the March 30, 2019 AGM.

Vote: While the Board fully discussed in length and voted on each items identified in the June 30, 2017 BoD meeting, the Board failed to accurately reflect in the June 30, 2017 Board Minutes that each issue had been considered independently and on its own merits. The Board takes responsibility for this mistake. We now know the strata response provided to the CRT during the Tribunal Decision Process failed to reflect accurately what happened at the June 30, 2017 Board meeting.

Bylaws and rules: The board used information from CHOA bulletin 300-650 (see July 7, 2018 BoD Minutes) to inform its position regarding if a bylaw or a rule was needed to allow an awning installation. The CHOA CEO wrote that bulletin on September 10, 2015. Based on that bulletin the board reaffirmed its position that a bylaw was needed to allow alterations to building exteriors. We now know the tribunal member has a different perspective on the need to have a specific bylaw to be approved to allow alterations to building exteriors.

- B) Prior to paragraph 40, the tribunal member wrote the following: “Was the strata’s decision to deny the awning request consistent with its bylaws and rules?”

In part of paragraph 42, the tribunal member highlighted the following: “Based on the evidence I find the rule was still in place in 2011”.

#### BOARD OBSERVATION:

The strata position was based on information from CHOA bulletin 300-650 where it is written that an amendment of the bylaws is necessary for certain types of alterations. That CHOA position is also supported by a strata lawyer (see <https://www.stratalaw.ca/#1490504691792-5a3b6116-3bda>) for more details. We now know the CHOA position is not supported by the CRT.

In part of paragraph 21, the tribunal member highlighted the following: “At the 2005 AGM the strata adopted an awning rule, including details of the aesthetics and required and specifications, as well as an approval form.”

Paragraph 21 gives more details as to what the tribunal member looked at when the 2005 awning rule was considered in the decision. The board used paragraph 21 in formalizing the 2005 awning rule.

The board also used information submitted by lot 45 owners at the January 4, 2018 hearing regarding the 2005 awning rule.

The awning rule is now recorded in the February 23, 2019 BoD Minutes.

- C) Prior to paragraph 45, the tribunal member wrote the following: “Did the strata follow an appropriate procedure when it denied the owners’ request?”

In part of paragraph 47, the tribunal member highlight the following: “Even if the votes would have remained the same, voting in this way gives the objectively reasonable appearance to owners that council did not consider and decide their issue on its merits.”

#### BOARD OBSERVATION:

See item (A), BOARD OBSERVATION: Vote.

#### STRATA BOARD PERSPECTIVE

Before a decision could be made by the board, a priori was to abide by the bylaws and rules available to us on June 30, 2017 and to follow the Strata Property Act to the best of our abilities.

The Board was, and is still, committed to protect the building envelope. That priority is supported through comments made by the CEO of CHOA as recorded in CHOA bulletin 300-650.

The Board was, and still is, committed to protect owners against liabilities associated with alterations to common property or to limited common property.

The Board was, and still is, committed to proposing alternatives to resolve a difference of perspective between owner(s) and the strata, or the strata and owner(s).

Regarding Lot #45, the situation reached an impasse in January 2018 and a Dispute Notice was initiated by lot 45 owners. The February 6, 2019 CRT decision resolved that impasse.

#### AREA OF FOCUS, LEARNINGS, PROGRESS MADE IN LAST 24 MONTHS

##### RULES:

In late 2017, in order to remove potential ambiguities regarding strata rules, the Board realized the need for owners to confirm the strata rules at the 2018 AGM. Based on all the rules available through Form B in the last three years preceding the March 2018 AGM, the Board conducted a vote to confirm the rules at the March 2018. The rules were confirmed at that meeting and are attached to the 2018 AGM draft Minutes.

Confirming the rules in March 2018 provided a solid foundation for owners and the strata in moving forward with rules that are up to date and fully documented.

The tribunal member confirmed the 2005 awning rule is still valid. The Board formalized that rule in its February 23<sup>rd</sup> Board Minutes.

The board took action at its February 23<sup>rd</sup> Board meeting to protect the building envelope integrity.

The awning rule and a new rule to deal with the building envelope integrity will be brought forward to the owners at the March 30, 2019 AGM for a vote. Owners will be invited to propose changes to the wording of any of those two rules before a vote is taken. The owners vote for those two rules will be by secret ballot.

As part of the AGM package, the board will provide its opinion to the owners regarding which of the above two rules should be kept or rejected.

##### BUILDING ENVELOPE INTEGRITY:

The Board remain deeply concerned with the integrity of the building envelope.

At the AGM on March 30, 2019, the Board will bring forward a proposal to fund a building enclosure condition assessment to deal with the building envelope integrity.

##### ALTERATION AND IDEMNIFICATION AGREEMENT:

The Board contracted a lawyer to create a template for an alteration and indemnification agreement. That template was used to prepare the indemnification agreement mentioned in paragraph 63 of the tribunal decision.

One very valuable outcome from the CRT final decision is the strata ability to request an alteration and indemnification agreement to future lot owners who request an alteration without the strata running the risk to be perceived or recognized as singling out an owner(s) because such an agreement is requested. The order from the CRT tribunal fully legitimized the right of the strata to require an indemnification agreement. This formalized and legal decision is of great help to the strata.

#### NOTICE GIVEN BY STRATA CORPORATION:

In 2017, the Board came to the realization that the strata had not been using the due process specified in the Strata Property Act (SPA) section 61 in providing notices given by the strata corporation. The strata modified its process to be in sync with the SPA section 61.

Since March 2018, we have been regularly asking owners to provide a “consent to deliver notice by email” to the strata corporation to increase efficiency of communication and to lower strata cost. When a “consent to deliver notice by email” is not available, the strata is using mail to send notices given by the strata corporation.

#### MAINTAINING ACCURACY OF OWNERS LOT #

As per CHOA recommendation, the strata strive to use Lot numbers in the Board Minutes and other official documentation sent to owners. Lot numbers can be found through the web by looking for BC Assessment and doing an assessment search.

Since March 2018, the strata has a spreadsheet correlating all unit numbers with their respective Lot numbers. This information should reduce greatly, if not eliminate, an unfortunate mistake that could occur in using the Lot number instead of the unit number.

#### USE OF A LAWYER BY THE STRATA WITH RESPECT TO A DISPUTE NOTICE:

Between January 2018 and February 2019, the strata dealt with two Dispute Notices. None of those were initiated by the strata.

The Board chose to minimize the cost associated with a lawyer. Regarding Lot 45 Dispute Notice, the board only used a lawyer during the negotiation/facilitation phase. Regarding Lot 70 Dispute Notice, the board did not use a lawyer.

Based on learnings from those two Dispute Notices, it is strongly recommended that the strata contact a strata lawyer right at the beginning of any Dispute Notice. The strata should also choose a lawyer that specializes in strata law.