

Crail Creek Club Condominiums
PO Box 160099 Big Sky, MT 59716

Board of Directors Meeting
December 8, 2009 @ 4 pm
Held by Teleconference and meeting at Hammond Property Offices

MINUTES

Present: *At HPM office:* Jerry Fishel, Chairman; *By teleconference:* Bill Pinna, Board Member; Ray Genellie, Board Member; Tom O'Connor, Board Member; Lance Kreig, Board Member; *At HPM office:* Scott Hammond, as Property Manager and Alison Gregory, as Board Secretary.

I. Approval of Annual Meeting 2009 Minutes: The minutes were accepted as written by the Board.

II. Sprinkler System: Mr. Fishel opened the discussion with the sprinkler system. He provided two documents with the discussion. ***Please refer to attached documents Exhibit A and Exhibit B.*** Mr. Fishel addressed the question of "who's responsible for a loss associated to the Sprinkler System?" to the insurance company and to the attorney. Mr. Fishel read through some of the highlights on both documents. Again, please refer to Exhibit A and Exhibit B for further explanation.

Overall, it was stated that the bylaws and declarations does not really define who is responsible for the sprinkler system and therefore, according to the attorney, the sprinkler system would fall in as part of the common area.

In the annual meeting, the following was discussed and put in the final minutes:

"The BOD, HPM, and the insurance company will produce a waiver that states the following: the four owners that have reactivated system and when that reactivation happens, the company that is involved needs to make representation that they will take responsibility for the sprinkler heads. The Association does not need to be involved with the responsibility for any malfunction of the heads if it were to happen."

Owners have responded to this being put in the minutes with concerns and questions and asking why they should sign a waiver and are not prepared to do so. Mr. Pinna said that he proposed the waiver in an effort to look after everyone and to be as fair as possible overall. Mr. Pinna said that someone would probably look towards the Association for responsibility, and therefore, a waiver needed to be put in place.

Mr. Pinna then suggested revising the bylaws and declarations and taking the responsibility off of the Association and then let owners deal with the sprinkler system individually. Mr. O'Connor asked if the Association had ever been responsible for sprinkler systems. Mr. Hammond said that in all other Associations he manages, the

Association is responsible for the sprinkler system. However, Crail Creek is the only one that does not have a sprinkler system in every building. If the sprinkler system is considered a limited common element, then only maintenance is covered. Mr. Pinna feels it should not be an Association concern. Mr. Kreig feels it should be an Association concern.

Mr. Pinna stated that we have one building with the sprinkler system that is not activated and one building that is activated. Therefore, the active building he feels should be the owner's responsibility. Mr. Genellie feels we need to be consistent and maintain that this is a limited common element and a limited common element is an owner's expense. Mr. Kreig stated that if the sprinkler fails, owners will come back to the Association for responsibility.

Discussion continued among the BOD as to how to handle this situation with the sprinkler system. Mr. Fishel suggested the owner of #607 (the only owner that voted to keep system activated for the building that has units 605-608) be approached to reconsider keeping the system activated. The owner of #607 stated at the annual meeting in September that he would be okay with leaving the system deactivated if the Association takes responsibility if something were to happen in his unit. Mr. Pinna suggested the owner get insurance for his unit for the renters that stay in his unit as part of a rider to his insurance policy.

Mr. Pinna does feel clarity is important in the bylaws and declarations. He feels it is a good idea to move forward with revising the bylaws and declarations to better define what is covered and what is not covered by the Association. Mr. Fishel also agrees and would like to address and review bylaws and declaration for the Association.

Mr. Hammond commented that if the owner of #607 would reconsider his vote on the system being deactivated, then all buildings at Crail Creek would be a "fire suppression" less association. Mr. Pinna emphasized again that the Association just did not want to be in the "crosshairs" and then the Association would be fairly accommodating everyone as best as possible. Mr. Hammond then also suggested we approach the owner of #607 and have a conference between him and the other owners affected (605,606,608) and let the four owners discuss this as well. Mr. Pinna also agreed that the four owners talking about this would be a good idea. Mr. Hammond agreed to call Mr. Rude (owner of #607) and discuss this with him.

Mr. Fishel agreed to do more research and find out from the insurance company clarification on whether or not a limited common element is covered and by how much by the Association.

In closing, the following will be addressed in the upcoming weeks:

1. Mr. Hammond will contact Mr. Rude regarding the conference call between him and the other owners and address the sprinkler system issue. Once all owners have been contacted, a date will be decided and a conference call set up.

2. Mr. Fishel will go to Duane Vinger and get clarification on what the Association's insurance covers for common elements and limited common elements.
3. The BOD will address revising the bylaws and declaration.
4. The Bell's email will be addressed and answered by the BOD regarding their questions sent to the BOD in November regarding the sprinkler system.

V. Adjourn: Mr. Fishel extended thank you's to the BOD and HPM for their discussions and time. The meeting was adjourned at 5 pm.

Signed: _____
Board Secretary



FARMERS

Exhibit A

November 20, 2009

Crail Creek Club Condo Assn
Po Box 161884
Big Sky, Mt 59716-1884
Policy# 065900860

RE: Sprinkler System

I received a question regarding who's responsible for a loss associated to the Sprinkler System?

Per your request, I've talked to some of our commercial field adjusters to get their opinion regarding this policy interpretation question. Field claims phone # is 1-800-494-6806. However, they can not respond in writing w/out an actual claim to look at.

First and foremost is to remember that each claim may have some extenuating circumstances that could change the final outcome of the claim.

With that said, generally speaking, the sprinkler system is going to be considered as part of the common area which then places the association policy as the primary insured. However, this does not mean that if a claim would occur, the association would be required to turn in a claim. Meaning, the board of directors may decide w/the blessing of the unit owners to place the responsibility of repairing the damages the sprinkler system caused back to the individual unit owners. In my opinion, the current restated Bylaws recorded on 8/6/2007, article XII Titled Insurance pg 18-21; don't actually clearly define who is responsible for the sprinkler system and thus they would fall in as being part of the common area.

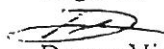
If a claim is turned into Farmers the adjuster is going to look and see what caused the loss, and then see if this is a covered peril under the policy. The existing sprinkler system should be properly maintained if it is operational because insurance policies will exclude coverage if it's determined to be a maintenance issue.

In the case of a freezing issue, if a sudden burst of one of the pipes occurred, the adjuster would look to see what caused the sprinkler system to be defective. Possible examples.

- 1.) Was it just really cold weather and no unit owners or condo association was @ fault?
- 2.) Was a window or door unintentionally left open?
- 3.) Was the unit owner's thermostat not set high enough or was it turned off?

These types of site conditions can effect who will ultimately be responsible to repair such damages from the sprinkler system. I've provided some possible causes of loss, but it is not inclusive. Each claim is reviewed to see how it will be adjusted.

Regards;


Duane Vinger

As I understand the situation, the Crail Creek Club Condominium consists of eight buildings, each housing four units. Of those eight buildings, two contain fire sprinkler systems in each of the units. It is my further understanding that you have learned that the sprinkler heads that were installed originally were recalled at some point, but the association was not made aware of that recall. The association has now become aware of the problem, but the manufacturer is not replacing the heads for free. That burden has now fallen on the association or the individual owners. As a result, the association contacted the eight owners in question and gave them the option of either paying for the replacements as the owners of limited common elements, or discontinuing the fire suppression system in the building. If one owner wanted to continue the system, then everybody in the building would participate. Apparently all four owners in one building opted out of the system, but one owner in the other building has renters and wants the system, so you need to upgrade the system for the whole building.

You told me that the cost is approximately \$175.00 per unit, which appears to be a rather small charge. Apparently one of the sticky issues has to do with a request by the association that the owners of the affected units sign a waiver absolving the association of any liability in the case of a malfunction, whether it be a failure to sprinkle in the case of a fire, or sprinkling even when no fire exists. There is the general question of which party has responsibility for the functioning of the system.

I have reviewed the declaration and bylaws and I see nothing that addresses the issue of the sprinkler system, in any fashion. Since there is nothing specific to govern the analysis, it will be necessary to resort to more general principles governing condominium management and document interpretation.

The definition of general common elements contains a catch-all phrase that includes "other elements necessary for the safety, maintenance and existence of the condominium..." The definition of limited common elements states that they are common elements reserved for use by fewer than all of the owners within the condominium. Since you have eight separate buildings and the sprinkler systems are in place in only two of the buildings, they appear to be limited common elements. It appears that the sprinklers are therefore the financial responsibility of the owners of the units in which they are found, although the maintenance of the sprinklers currently seems to be a responsibility taken on by the association as a whole.

Ultimately, the expenses of caring for the condominium fall on the owners. We often talk in terms of whether the owners or the association should pay for maintenance, as if the association is somehow different than the owners and somehow has a separate source of funds. The reality is that the owners pay assessments to the association, which often contracts with others to provide services. Obviously, that is what will happen in this case as well. Whether the individual owners contract to maintain the sprinklers, or it is done by the association, the cost to the owners will be the same. The difference is that the association, on behalf of all of the owners, can deal with the issue a bit more efficiently in many cases, and there is currently language in the declaration that puts that burden on the association to handle the maintenance.

Article XI, paragraph 11 states:

11. Maintenance by Owners Association. The Association shall maintain and keep in repair the exterior of the Units and the general and limited common areas and the fixtures thereof. All fixtures, utility lines and equipment installed in the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Association. The Association shall do no act nor any work that will impair the structural soundness or integrity of the building or impair any easement.

That paragraph is not a model of clarity, but it sure seems to impose the duty on the association to maintain the sprinkler system, even if the owners pay for that maintenance in the end. Negligence requires that a duty must exist, that there has been a breach of that duty, that the act or omission constituting the breach was the proximate cause of the injury suffered, and that damages exist. If the association just stops maintaining the sprinklers, then the association as a whole could be found liable if a malfunction occurs, since the failure to continue the maintenance could be seen as a breach of the duty leading to the damage. On the other hand, if the association dutifully has the system checked on the recommended schedule and uses a competent contractor to carry out the maintenance, then the association would normally not be found liable, since it met its duty. Typically, in that situation, the contractor would bear the responsibility if anything goes wrong, since the contractor is assuming the duty of care for those sprinklers.

That does not mean, however, that an owner will just shrug his or her shoulders and do nothing with respect to the association if a loss occurs, nor does it necessarily dictate whether the association as a whole should fund the maintenance of that limited common element. Most owners will make a claim against the association in the event of a problem, since they do not want to bear the cost of the deductible themselves. At times they don't even want to make a claim against their own insurance. A claim against the association does not necessarily equate with liability for that claim, but sometimes the burden of fighting the claims, both financial and otherwise, are onerous enough that it becomes easier to just submit the claim to the association's insurer, pay the deductible and move on. There are also arguments to be made for and against the association as a whole just accepting that responsibility.

Obviously, if there is a loss and the loss involves a limited common element, those not affected directly by the occurrence would be better off financially if they do not have to participate in paying for that loss. Those not directly affected would simply go on about their business and let the owners who are affected bear the cost. On the other hand, it is my understanding that the Crail Creek Club Condominium has more or less disregarded the distinction between limited and common elements and has treated all of the units the same for most purposes. In doing so, you do run the risk that those people who do not suffer the loss may be called upon to pay part of the cost of repair or replacement, but you also spread the risks among more people, which is essentially the definition of insurance. In that way you make it more probable that everybody will, at some point, be called upon to help cover a loss, but you also make the potential cost for each owner significantly less, since that loss will be spread among many more parties. With or without the sprinkler systems, you always have potential for losses, so a good argument can be made for just treating the buildings and their systems as general common elements in order to spread the risk. In any case, that risk would probably be fairly tiny. All of the systems employed in your condominium are employed in millions of places all over the world and the losses from malfunctions seem to be minimal, from what I can see.

With that said, the owners need to decide on the path to be taken. The association can continue to be responsible for maintenance. If so, then the association needs to make sure that the maintenance is done in a timely manner by a competent contractor in order to minimize the exposure. If something goes wrong and a claim is submitted, you would turn it over to the association insurer and let the process play itself out. The association could be called upon to pay the deductible if it turns out that the association has liability. If you decide to clearly spread the risk, then the association could pay the deductible, even without any liability.

The other approach, which is more burdensome, would be to amend the declaration to clarify the language stated above and to eliminate the responsibility of the association to maintain the sprinklers. That opens the door to further conflicts between owners who do want the system and those that don't and how they will pay for any maintenance or upgrades that require the cooperation of the various owners. It also leads to further pushes to eliminate unwanted responsibilities of the association, which could, and probably would lead to trouble.

Obviously, I am not in a position to determine the sufficiency of the work that is performed on the sprinklers, nor am I in a position to assess the potential risk of a malfunction. I am also not in a position to determine the amount of effort required of the association to have the system checked as needed. Those are assessments that you will have to make. You will have to decide for yourselves whether the risk of liability on the part of the association will justify the effort and expense to amend the declaration to remove the maintenance duty from that document. Until you do, however, it is my opinion that the association, in its management of the condominium, needs to arrange for the maintenance, then assess the affected owners, or all of the owners, for that maintenance.

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