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## Condo Smarts

Headline: What is a significant change?

Topic: Alterations

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Written by: Tony Gioventu

**Dear Tony:** In October 2017 our strata corporation held an SGM and approved a special levy of over \$1,200,000.00 to replace the membrane over our parking garage. At that time the owners approved specific design plans that stated “all finishing materials had to match the existing structure”. During discussion at the SGM the owners made it clear that they would not approve the project if this stipulation was not met. In June 2018, our strata council president and another member of council signed a change order. This change order approved a significant change to the existing slump block finish and instead agreed to a smooth poured concrete finish. These finishes look very different. The smooth walls have significantly altered the original, iconic appearance of our building. Council reluctantly notified the owners of this critical change in their strata council meeting minutes of July, 2018. Is a council allowed to do this? What recourse do we owners have? Who pays to remedy the situation?

*Patricia Coulter, Victoria BC*

**Dear Patricia:** While the *Strata Property Act* sets out the condition “significant change in use or appearance of common property or common assets” it does not establish a definition. The principle reason; each strata corporation is unique and the circumstances that may result in a significant change in use or appearance that could affect one property may vary greatly from another property depending on the reasons for the change, the location, and the result.

If your strata community agreed to the renovation based on an assurance that finishes would not be changed, and the strata council subsequently acted contrary to those limitations, any owner could dispute the decision and file a court application, commence an arbitration or start a claim with the Civil Resolution

Tribunal. The decisions of the courts or the tribunal are specific to each strata corporation, however most decisions have been a result of a loss or change in conditions that affect the use and enjoyment, of either common property, a common asset or limited common property, loss of value of property or altered access.

Here are some helpful examples of obvious significant changes that have occurred over the years: a change in landscaping or removal of trees without the approval of the owners that resulted in a loss of privacy, diminished access or a dramatic change to the exterior appearance such as a balcony enclosure that resulted in the blocking of ocean views for 3 adjacent strata lots, the change of colour of a paint scheme from green to burgundy, the construction of a pergola in front of 2 strata lots blocking their yard access, moving a roof top ventilation system from the area over a hallway to an area over a strata lot resulting in a dramatic noise increase, owners who change their windows to an entirely different design and colour, or the strata council removing designated special needs parking.

Many of these types of changes can be reversed; however, major construction is extremely difficult to undo without significant cost. Legal assistance is essential when writing resolutions for special levies and major repairs. If the resolutions had been worded sufficiently, the conditions or authority to approve changes in use or appearance could have been defined in the resolutions and the council may have likely been granted authority to make decisions under certain conditions, such as product availability, design problems or building code issues. For an effective claim it will be necessary to identify how the change affected use, enjoyment, access or current or future value of your property.