

**Headline: The Case of the Controversial Change to Common Property**

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When an owner requests permission to make an alteration to common property the challenge for a strata council is to determine whether the alteration will result in a significant change in the use or appearance of common property which would then require the approval of not just the strata council but also the approval of the owners by means of a 3/4 vote.

Section 71 of the *Strata Property Act* (the "Act") requires that owners approve a change in the use or appearance of common property by means of a 3/4 vote if the change is significant. However, the Act does not define the word "significant" nor does it provide guidance on when a change in the use or appearance of common property requires prior approval of the owners.

A decision of the BC Supreme Court has recently provided guidance on this issue. In the case of *Chan v. Owners Strata Plan VR 677 and Kiess*, the Court was required to determine whether certain alterations to common property required approval pursuant to section 71 of the Act.

VR 677 is a strata development containing three strata lots. Because there are only three units, in order to achieve a 3/4 vote, all three owners must vote in favour of the resolution.

Ms. K wished to make a change to common property by adding another door from the common property hallway to her suite. Ms. K also wished to make a change to the exterior of the building by moving her door on the exterior of the building to where a window was located and to place the window in the location of the door.

Mr. C, the petitioner, objected to these alterations. Mr. C argued that the alterations resulted in significant changes to the appearance of common property. Because the changes were significant, according to Mr. C, Mr. C's approval of the alterations was required before they could proceed.

In order to determine whether the alterations were a significant change in the appearance of common property the Judge noted firstly the definition of significant as defined in the Oxford Dictionary as being "noteworthy, important, consequential".

The Judge then stated that both objective and subjective indicators may need to be considered to determine whether the intended changes to the common property are significant. Although acknowledging that the list was not exhaustive, the Judge stated that the objective factors that should be considered in respect to the alteration to common property included:

- the visibility or non-visibility to residents and the general public;
- whether the use and enjoyment of other strata lots or an existing benefit enjoyed by other strata lots was affected;
- whether there was an interference or impact on the marketability or value of other strata lots as a result of the change;
- the number of strata lots in the strata plan; and
- whether the strata lots are residential, non-residential or a combination of the two.

The subjective factors that the Judge considered relevant included:

- whether the strata corporation governed itself in a formal manner in compliance with the Act or more informally reaching decisions on a consensus basis as often occurs in small strata corporations;
- whether similar changes have been approved or permitted in the past; and
- whether the owners who are objecting were permitted, either through approval or acquiescence, to make similar changes in the past.

The Judge then assessed the alterations proposed by Ms. K against the above noted criteria.

Because of the configuration of the hallway, the Judge found that the additional doorway proposed by Ms. K would be virtually non-visible to other residents and non-visible to the public. The Judge also found that the installation of another door did not appear to affect the use and enjoyment of any other strata lot nor did it affect any existing benefit of another strata lot. The additional door would not be an interference or disruption with any other strata lot and did not affect the marketability of any other strata lot.

The Judge held that the alteration was a minor adjustment to common property. The Judge concluded that the alteration was not significant and therefore he was not required to consider any subjective factors. The Judge concluded that section 71 was not applicable to the change and that a 3/4 vote was therefore not required.

The Judge then considered the exchange of the door and window on the exterior of the building.

The Judge found that the changes being proposed would be visible to Mr. C in a minor and insignificant way and that the changes would not likely be noticeable to the general public. Mr. C argued that the relocation of the door would result in increased noise in his unit as the proposed door opening would be below a bedroom window. The Judge held that it was mere speculation that the movement of a door three or four feet would cause more noise. The Judge also took into account that the doorway in question was to a private residence and was not an entrance to a public hallway or the common area of a larger strata corporation.

The Judge then considered the subjective factors. The Judge found that Mr. C had altered common property to install a different type of glass railing on this deck which created a very different exterior appearance. The Judge found that Mr. C had made the changes without seeking the approval of the other owners.

The Judge held that the alterations to the exterior of the building proposed by Ms. K were relatively modest and did not compare to the significant change to common property made by Mr. C without approval.

Taking into account the objective and subjective criteria, the Judge concluded that the alterations to the exterior of the building proposed by Ms. K did not constitute a significant change in the appearance of common property. As a result a 3/4 vote was not required.

The decision in *Chan* assists strata councils by identifying many of the factors that should be considered when determining whether the alteration being proposed will result in a significant change in the appearance of common property and thus must be approved by a 3/4 vote of the owners. The decision also confirms the need for strata councils to immediately address unauthorized alterations to common property which have resulted in a significant change in the common property's appearance. If the strata corporation takes no action when such changes are made, it may be powerless to deny other owners permission to make similar changes.