

**JAMES/KILMER CONDOMINIUM ASSOCIATION
BOARD OF DIRECTORS MEETING
APRIL 28, 2009**

A meeting of the Board of Directors of James/Kilmer Condominium Association (the "Association"), an Illinois not-for-profit corporation, was called to be held on Tuesday, April 28, 2009, in the James House Hospitality Room, 1560 North Sandburg Terrace, Chicago, Illinois, pursuant to By-Laws.

CALL TO ORDER

David Beck, President of the Association, called the meeting to order at 8:05 p.m., following an address to unit owners by 42nd Ward Alderman Brendan Reilly, and declared that a quorum was present in that the following directors were present:

Judy Barnes
David Beck
Lynn Conner
Betty Latson
Tom Meyers
Karla Ross
Dorsey Ruley
Angus Shorey

Duane Hickling was absent.

Also present were Maurina Provus, Property Manager, Debra Galassi, Assistant Property Manager, and Dan Harvey, Site Supervisor, of Draper & Kramer, Inc. Barbara A. Roberts acted as Recording Secretary.

AGENDA CHANGES

Mr. Beck asked if there were any changes or additions to the agenda, and made the first addition himself: an action item appointing new alternate representatives to the HOA Board. Ms. Ross added an action item to pursue the accounting investigation into the differences between the expenses for James House and Kilmer House. Mr. Meyers added two action items pertaining to committee meetings.

PRESIDENT'S COMMENTS

Mr. Beck offered remarks and explanations on two issues: the recent lawsuit about paying for the new windows in James House, and the window replacement project itself.

With regard to the lawsuit, Mr. Beck first of all pointed out that the plaintiffs, the Kilmer House unit owners, were within their rights to file the suit, and asked that remarks from the audience about the lawsuit remain within the bounds of civil discourse. He then delivered a brief history of the suit, starting with the Board in 2006 receiving an opinion from the Association's attorney, David Sugar – which was later also delivered in writing – that both Kilmer and James unit owners should be responsible for paying for the new James House windows. In late 2007, Kilmer unit owners raised an objection to this, so a second legal opinion was sought, and it agreed with the first one. In February 2009, Kilmer House unit owners brought a lawsuit against James House unit owners over who should pay for the windows, filing a motion for summary judgment. On April 2, 2009, the presiding judge declared that Kilmer House unit owners are not responsible for any portion of payment for new windows in James House. Mr. Beck stated that the meeting's agenda included a resolution to file a notice of appeal of the summary judgment, and that the Board will continue to attempt to work out an equitable solution to the situation. He then made some brief remarks about splitting the Association into two associations, and added that in all things, the Board seeks to implement actions that are fair to all unit owners.

Mr. Beck then offered a brief history of the replacement window situation, which started with discussions with a representative from Klein + Hoffman in early 2007, noting that this is a long, involved project whose costs have risen and will continue to rise with the passage of time. He stated that bids have now been received and that, even though the project may not be started in 2009, the chairs of the Finance, Window and Infrastructure committees are in the process of gathering all remaining information about the project required to perform due diligence to convey to the Board so a decision may be made about whether to go forward with the project and, if so, how to pay for it. Mr. Beck added that if the Board decides to levy a special assessment to pay for the project, the unit owners do have the right, under the Illinois Condominium Property Act, to vote against the special assessment.

REGULAR OPEN FORUM

Numerous unit owners asked questions or made statements; these are summarized as follows:

- Why has there been no newsletter since December or January, even on the Web site? Ms. Ross stated that the latest issue is being assembled now, that paper copies are still necessary because not all unit owners have access to the Association's Web site, and that Management is in the process of reactivating Channel 195, such that eventually the newsletter can be broadcast as a PowerPoint presentation on that channel. Ms. Ross also reminded the unit owners that the newsletter is a volunteer effort, and that there are few volunteers to contribute to the effort but they are doing their best; she thanked the unit owners for their patience.
- The two Board members from Kilmer should not be excluded from closed sessions of the Board. Mr. Beck replied, "OK."
- How were special assessments handled in the past? Ms. Latson replied that only one other special assessment was levied, in 1996, for concrete work on both buildings, which was performed simultaneously, and that it was necessary owing to low reserves.
- Has RCN increased its rates? Mr. Beck stated that the increase applies only to services such as telephone and Internet, not to the basic cable rate included in the Association's contract.

- When Kilmer House's windows were replaced, with James House paying its share of the cost, why was no reciprocal arrangement made in writing at the time? Mr. Beck referred to the summary judgment of the court, which includes the specification that windows are a limited common element, and stated that not everyone is in agreement with the summary judgment; he added that he was unaware of what the situation was ten years ago. Mr. Meyers added that he lived in the Association at the time and that the Kilmer windows, like all other limited common elements, were paid for based on percentage of ownership, a practice which has been in place from the beginning up until the summary judgment delivered a few weeks ago. Mr. Shorey, who was on the Board in 1999, confirmed Mr. Meyers's remarks. Ms. Latson stated that the Board has always sought to be guided by its interpretation of the Declaration, but that the summary judgment has overturned actions that were previously considered acceptable.
- Has the Board considered an alternative to RCN to supply cable television and other services? Mr. Beck replied that the Association's contract with RCN continues until 2011, and that when the current contract with RCN was in the process of being renewed and Comcast was being considered, Comcast would have required new wiring in both buildings; he added that it was hoped that cable technology would improve by 2011, and that satellite TV was considered but decided against. Two unit owners suggested considering Comcast and DirecTV when the current cable contract comes up for renewal.
- If the Board appeals the summary judgment, what is the time frame for the appeal? Mr. Beck replied that it could be six months to a year unless the appeal is expedited. He then explained how the appeal process works.
- What is the benefit to James House of being combined in an association with Kilmer House? Mr. Beck stated that he did not know, and that it was hoped that an accounting investigation of the type to be proposed by the Board would reveal whether or not there is a benefit.
- What is the background of the James versus Kilmer situation; what is the basis of Kilmer's complaint, the lawsuit, and the judge's decision? Mr. Beck introduced Mr. Dan McNamara, a Kilmer House unit owner and one of the captioned plaintiffs in the lawsuit, and asked him to explain his position. Mr. McNamara stated that the idea of Kilmer unit owners sharing the cost of windows in James House did not seem fair to him, despite James unit owners having shared the cost for Kilmer's windows some years before he purchased his unit, and that he sought an explanation from the Declaration, where he found that repair or replacement of limited common elements is the responsibility of those who benefit from them, which appeared to support his view. He stated that he sought the advice of two attorneys, who agreed with the Declaration, but that the Board disagreed with the attorneys. Mr. McNamara added that at this point it seemed best, without intending to appear adversarial, to turn the question over to a disinterested third party, and that in effect his contention was that the Board in the past erred by misinterpreting the Declaration.
- Will Kilmer reimburse James for the money that James paid for Kilmer's windows? Ms. Ross replied that the court did not rule on the issue of reimbursement but declared only that Kilmer unit owners were not to be assessed for replacing James's windows. Mr. Beck added that the issue of reimbursement was not raised by the complaint, that he cannot speak for past boards and their actions, and that the issue of payment for previous balcony and concrete work was also not addressed by the court.
- Is the Board going to proceed with an appeal? Mr. Beck stated that the Board must authorize the Association's attorneys in an open meeting to file an appeal.
- Who will pay the court costs for an appeal? Mr. Beck explained that part of the expense will be covered by the Association's directors and officers insurance, and the remainder will be paid by the Association.

- Taking into account the problems with the economy and how it is adversely affecting unit owners, what is the situation with regard to the windows? Mr. Beck replied that the process has been going on for two years, that a decision must be made soon, that the Board is taking the economic situation and its effects into account, as well as the varying opinions about paying for the project, and that the Board should be given the opportunity to come to a decision. He added that opportunities will be provided for unit owners to express their opinions and that, if the Board votes for a special assessment, unit owners will have the opportunity to vote it down.
- The issues are understood, but the decisions are not final. James and Kilmer should work out a solution via mediation, arbitration or some means other than expensive lawsuits.
- What is the status of the sundeck and penthouse rooms? Mr. Beck replied that the Penthouse Committee is working on plans for the penthouse rooms, and that the sundeck was removed because of leaks in the roof and cannot be replaced until the roof is replaced, such that the order of replacement projects is: first, the windows; second, the roof; third, the sundeck.
- Microphones should be provided for Board members and the audience in order that everyone may hear them.
- The lawsuit appears to have come about because the Association is short of money and appears not to have planned ahead adequately; what will happen with the next large project? Ms. Latson cited the Reserve Study, which projects repairs and replacements 20 to 30 years out, and noted that between 2000 and 2005, several other large, expensive projects were added to the Reserve Study forecast, including items such as the risers, the annunciator system and the periodic hands-on façade inspections required by the City of Chicago, and so forth. She stated that the Board has added as much money to the reserves as it can but that it is not possible to deal with very large, expensive projects without special assessments, and that the Board is doing its best to schedule these large projects in such a way as not to cause too much financial hardship to unit owners. Ms. Latson added that James/Kilmer is not alone among condominium associations in requiring special assessments, and urged unit owner attendance at Finance Committee meetings to see how financial matters are dealt with.
- Will the Reserve Fund be increased? Ms. Latson replied that the Board did not do so in the 2009 budget because of the Kilmer lawsuit, but that it intends to increase the Reserve Fund next year.

A general discussion about the reserves ensued. Mr. Beck encouraged unit owners to attend meetings of the Window, Finance and Infrastructure committees.

The Board recessed for a short break at 9:10 p.m. and reconvened into Open Session at 9:15 p.m. Mr. Beck announced a change in the order of the agenda.

APPROVAL OF MINUTES

Ms. Barnes asked if there were any additions or corrections to the minutes of the regular Board meeting held on February 24, 2009. There were five corrections. **Judy Barnes moved that the draft of the minutes of the regular Board of Directors meeting held on February 24, 2009, be approved as amended. Angus Shorey seconded the motion. The motion passed unanimously.**

TREASURER'S REPORT

Ms. Latson delivered her report as follows:

The Finance Committee has reviewed the preliminary audit with the Association's accounting firm, is making certain changes in it, and hopes to bring it to the Board to be voted on at the May Board meeting; it can then be distributed to unit owners in June.

To help the Board with its decision on the windows, the Committee has been communicating with banks about possible financing, and has been informed that banks are lending at this time and has derived some sense of what they are willing to do; the Committee has also been given some guidelines with regard to cash flow projections and will begin putting together information to pass along to the Board.

While a current interim financial report reflecting year-end audit adjustments is not yet available, the first-quarter financials show that utilities at this point are slightly over budget but that other expenses are in line with the budget.

The Committee has had several discussions about investments. Currently all but approximately \$700,000.00 of the reserves is invested in FDIC-insured certificates of deposit in various banks, and the remainder is in an FDIC-insured checking account, so all funds are insured.

ACTION ITEMS

Approval to Authorize a Notice of Appeal and Motion to Clarify Judicial Order

Upon motion duly made by Tom Meyers and seconded by Betty Latson, the following resolution was made:

BE IT RESOLVED, that the Board of Directors authorize the law firm of Levenfeld and Pearlstein to file a motion to clarify the order of April 9, 2009, regarding the Reserve issue and to file a notice of appeal when appropriate relating to the case of Dilorio, etc., vs. Carl Sandburg Village #7. After discussion, Mr. Beck requested a roll-call vote, the result of which was as follows: Ms. Barnes–Yes, Mr. Meyers–Yes, Ms. Ross–Yes, Ms. Latson–Yes, Mr. Shorey–Abstain, Ms. Conner–Abstain, Mr. Ruley–Yes. The motion passed.

Approval of Revised Heat Exchanger Proposal

Ms. Provus stated that the Board has already approved replacement of the heat exchanger, but that Kurt Kruger, the Chief Engineer, has recommended upgrading the original specifications to stainless steel in order both to standardize all four exchangers to reduce future replacement costs, and to increase the life span of the exchangers five to ten years. **Upon motion duly made by Tom Meyers and seconded by Angus Shorey, the following resolution was made:**

BE IT RESOLVED, that the Board of Directors approve the proposal submitted by AMS Mechanical Systems, Inc. on February 28, 2009, to supply a spare stainless steel heat exchanger in the amount of \$68,299.00. The motion passed unanimously.

Approval of Remodeling Requests

After a brief discussion, upon motion duly made by Lynn Conner and seconded by Tom Meyers, the following resolution was made:

BE IT RESOLVED, that the Board of Directors approve the remodeling requests submitted by the owners of unit numbers 315J, 1701-02J, 2715J and 616K, which have been reviewed and are in compliance with the Association's rules, regulations and conditions, and which will be subject to ongoing inspections by the Association's Chief Engineer. After discussion, the motion passed unanimously.

During the discussion that preceded the vote, in response to an earlier question from Ms. Barnes regarding the timing of the remodeling requests, the actual remodeling, and the Board's approval, Ms. Ross explained the policy established by the Board some years ago such that unit owners may proceed with remodeling, if Management and the Chief Engineer approve the plans and the required permits are obtained, before the Board approves the remodeling request, and that this was done to expedite remodeling projects while still ensuring that the projects comply with the Association's requirements.

Approval to Appoint New Alternate Representatives to Sandburg HOA

Upon motion duly made by Karla Ross and seconded by Judy Barnes, the following resolution was made:

BE IT RESOLVED, that the Board of Directors appoint Frank Mustari and Darwin Spurling to act as alternate representatives from Association #7 to the Sandburg Village Homeowners Association in place of Sarah Leonard and Karla Ross. The motion passed unanimously.

Mr. Beck directed Management to notify the HOA Property Manager, Steve Habib, of the new alternates.

Approval to Open All Committee Meetings to All Unit Owners

Upon motion duly made by Tom Meyers and seconded by Dorsey Ruley, the following resolution was made:

BT IT RESOLVED, that the Board of Directors approve a requirement that all committee meetings be open to all unit owners and be posted seven days in advance of the meeting date, the posting to include a proposed agenda when possible. After discussion, Mr. Meyers requested a roll-call vote, the results of which were as follows: Ms. Barnes–Yes, Mr. Meyers–Yes, Ms. Ross–Yes, Ms. Latson–Yes, Mr. Shorey–Yes, Ms. Conner–Yes, Mr. Ruley–Yes. The motion passed unanimously.

The discussion that preceded the vote centered on whether or not unit owners should be permitted to attend meetings of committees at which issues that may be sensitive are being considered, such as the Management Search Committee. The consensus was to limit the discussion of sensitive topics in committee as much as possible, but that if such issues must be discussed by a committee and are topics included in the Illinois Condominium Property Act rules that allow the Board to hold closed meetings, the committee would also be permitted to close its meetings while discussing those specific topics. Most Board Members felt that such issues should primarily be discussed in meetings of the Board. It was further noted that committees do not make decisions, but rather convey recommendations to the Board so it may render a decision in open meetings.

Approval to Designate Certain Committee Meetings as Board Meetings

Upon motion duly made by Tom Meyers and seconded by Dorsey Ruley, the following resolution was made:

BE IT RESOLVED, that the Board of Directors approve a requirement that any committee meeting attended by four or more directors shall be considered a Board meeting and shall be posted as such. After discussion, the results of the roll-call vote were as follows: Ms. Barnes–No, Mr. Meyers–Yes, Ms. Ross–No, Ms. Latson–No, Mr. Shorey–Yes, Ms. Conner–Yes, Mr. Ruley–Yes. The motion passed.

During the discussion that preceded the vote, Mr. Meyers explained his reasons for proposing such a requirement, referring to a recent meeting of several committee chairs who are also Board officers at which he thought some decisions were made about the window project; he noted that he was unable to attend that meeting and that he did not feel that it was an open meeting. Ms. Ross explained that she attended and chaired the meeting as the Communications Committee chairman, that the other attendees were the chairs of the Infrastructure, Finance and Windows committees as well as representatives from Klein + Hoffman, that the Management Office was notified of the meeting and its intent and purpose, and that its purpose was only to discuss project planning, management and scheduling. She added that with bids about to be received, it was felt necessary to discuss project planning and scheduling with the engineering consultants in order to learn what steps need to be taken, to organize and coordinate committee activities, and to develop communications about the project to concerned unit owners. Further discussion ensued about how the meeting was perceived by other Board members and by unit owners. Ms. Ross stated that no one was excluded on purpose but that it was felt that the meeting should include the chairs of the committees directly involved in the window project. She also acknowledged the importance of being sensitive to the perception of issues of inclusion and trust among Board and committee members and unit owners. Mr. Beck recalled other meetings that included only those committee chairs directly involved in a given issue; he also noted that the Association's attorneys have confirmed that it is permissible for Board members to meet to discuss various matters without necessarily including all nine Board members. Further discussion ensued about perceptions of trust among Board members and unit owners. As one of the committee chairs involved, Ms. Barnes confirmed Ms. Ross's explanation of the purpose of the meeting, i.e., some project planning by the key stakeholders committees (Finance, Windows, Infrastructure), as there is as yet no project manager on board; she added that 90% of all project problems occur because of poor planning in the first 10% of the project, which is the status of the project at this point.

Approval to Authorize Management to Engage Accounting Services

Ms. Ross presented her views on the perceptions among unit owners of the James-versus-Kilmer situation, with unit owners in each building thinking that in some way they are subsidizing the others, and the resulting discomfort and frustration expressed by many, noting that the situation has actually existed for many years and that it appears to be based on perceptions, not on facts. She stated that part of the reason for the perceived inequity between the two buildings is simply the combination into one association of a high-rise and a low-rise building with very different budgeting and expense requirements, and she concluded that the only way to restore harmony between the two, to avoid further litigation, and to enable the Board to proceed on a sound footing is to seek professional opinion and advice on the financial relationship between the two buildings. Ms. Ross predicted that the outcome, decided by unit owners informed of the facts, could be a continuation of the Association as it now stands, operating with one budget, with confidence that the structure of the current Declaration makes sense, or could be the discovery that it would be better for the owners to petition for either a separation of budgets or a separation of the two buildings into two different associations. **Upon motion duly made by Karla Ross and seconded by Tom Meyers, the following resolution was made:**

BE IT RESOLVED, that the Board of Directors authorize Management to contact and solicit advice from three accounting services with the goal to ultimately provide the Association with an objective and comprehensive analysis breaking down the capital and operating expenses of the two Association buildings, the results to be brought to the table no later than the date of the June Board meeting for consideration and discussion by the Board and a timetable to be established. After discussion, Mr. Beck called for a roll-call vote the results of which were as follows: Ms. Barnes–Yes, Mr. Meyers–No, Ms. Ross–Yes, Ms. Latson–Yes, Mr. Shorey–Yes, Ms. Conner–Yes, Mr. Ruley–Yes. The motion passed.

During the discussion that preceded the vote, the Board agreed to ask the accounting firms how far back in time the accounting examination should go. Further discussion ensued about the pros and cons of conducting such an investigation, with Mr. Meyers and Mr. Ruley contending that it would worsen the situation and others countering that it would be beneficial. Mr. Beck recalled a proposal from December 2007 to separate the budgets, and commented that a separated budget structure would be cumbersome and difficult to administer.

COMMITTEE REPORTS

Infrastructure Committee

Ms. Barnes reported that the Infrastructure Committee met jointly on April 21 with the Finance and Windows committees to review the James House windows and concrete repair bids compiled by Klein + Hoffman and presented by Peter Powers and James Swint. She stated that the Committee will be able to make final recommendations only after decisions are made about the window design and installation options and the numbers are negotiated with a selected team made up of the window manufacturer and the installers in order to obtain the best price. Ms. Barnes further stated that all of the bids appear to be within the original cost estimates and, at a base of \$10 million to \$12 million, are about the same as the 2006 estimated construction costs. She cautioned that these are estimates of construction costs, not total project costs, which would also include design fees, permits, insurance, project management fees, etc., all of which could increase costs by an additional ten percent or more. Ms. Barnes stated that the next step

is for the Infrastructure Committee to determine which firms it would recommend inviting for detailed interviews, and added that the next Committee meeting is scheduled for May 6. She emphasized the importance of continued action to complete the due diligence necessary for the project so that the Board and unit owners can make an informed decision as soon as possible whether or not to proceed.

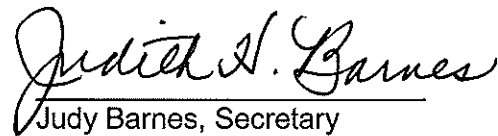
MANAGEMENT REPORT

Ms. Provus announced that she is about to take a leave of absence commencing May 15 and that this would be her last meeting with the James/Kilmer Board. She added that she has enjoyed the challenges of managing the Association over the last three years, thanked the Board and unit owners, and wished the Association all the best. Mr. Beck stated that her resignation will be announced to the unit owners, and that a new Property Manager has been engaged who will take on the property management position on May 18.

ADJOURNMENT

There being no further business to come before the Board, upon motion duly made by Tom Meyers and seconded by Judy Barnes, the meeting was adjourned at 10:28 p.m.

Respectfully submitted,


Judy Barnes, Secretary