



MUNICIPAL COUNSELLORS

ADVISORS TO MUNICIPALITIES AND DEVELOPERS

K. Hugh Ham
E-mail: h.ham@municipalcounsellors.com
Phone: (403) 571-0025 Fax: (403) 571-0028
Our File No. 1071.001

November 27, 2013

Condominium Corporation 0711408
(Peigan Crossing)
3750 - 46 Avenue SE
Calgary, Alberta

Attention: Mr. Ben Yee, President

Dear Sir:

Re: Land Use Redesignation

The question I have been asked to opine upon is whether Condominium Corporation 0711408 ("Peigan Crossing") is entitled to continue an application for a land use redesignation of the land upon which the condominium buildings and common property are located in the absence of the consent of all of the owners of the condominium units.

The initial application was for a C-COR3 land use district and was authorized by a special resolution of the corporation (copy attached). There was one dissenting owner to the C-COR3 application. Subsequently, the City's Planning Department objected to C-COR3 but suggested either an I-B or an I-C designation would be appropriate.

Peigan Crossing's records show that the proposed change in the land use application was discussed by the corporations directors at their meeting of January 21, 2013, The Notice of the Annual General Meeting (AGM) of the Corporation included the land use application in the agenda as "Zoning Issue I-B" and the AGM materials included the I-B land use district provisions from Bylaw 1P2007.

The meeting was advised of the Directors' recommendation to proceed with an I-B district application and there were no dissenters. In particular, the 4 units owned by Mr. Hibbard's company, who has complained to the City Council that he was unaware of the change in the application, were represented at the AGM by his wife, who signed the register of attendees. Following Mr. Hibbard's letter to the City Council, Peigan Crossing has reconfirmed the support of all but two owners: Mr. Hibbard (opposed) and one other owner who is out of the country (no further opinion expressed).



Condominium corporations are created, pursuant to section 25 the Condominium Property Act, 2000 R.S.A. c. C-22, as amended (the "Act"), upon registration of a condominium plan. The owners of units within the condominium plan are then related to each other by that statute which provides, amongst other matters, for the exercise of the corporation's powers.

Pursuant to section 33 of the Act, upon registration of the condominium plan, the bylaws of the condominium corporation are either those of Appendix 1 to the Act or bylaws adopted by the condominium corporation in replacement of Appendix 1. The bylaws for Peigan Crossing were adopted in replacement of Appendix 1 to the Act and are registered against the condominium plan by instrument 081054573. Pursuant to section 32 of the Act, the bylaws "regulate the corporation and provide for the control, management and administration of the units, the real and personal property of the corporation and the common property."

The powers of the corporation are administered by the Board of Directors or may be exercised by the unit owners directly by way of resolution or special resolution. A "special resolution" is defined in section 1(1) of the Act and requires, in essence, the consent of not less than 75% of the unit owners representing not less than 75% of the total unit factors of the corporation. A special resolution of Peigan Crossing has been passed authorizing the corporation to seek an amendment to the City of Calgary Land Use Bylaw to redesignate the land use district within which Peigan Crossing is located. In this case, the powers of the corporation have been exercised by the unit owners directly.

The special resolution is binding on the corporation and the unit owners by virtue of section 37(1) of the Act¹ and section 4 of the bylaws for Peigan Crossing. Section 4 of the bylaws of Peigan Crossing provides that the condominium corporation has "the power to do all such things which any body corporate shall be empowered and authorized to do under the Business Corporations Act of Alberta (as amended and replaced from time to time) and to do all things and have such rights, powers and privileges of a natural person." Pursuant to section 16(1) of the Business Corporations Act, 2000 R.S.A. c. B-9, as amended, a corporation has the capacity and, subject to the Act, the rights, powers and privileges of a natural person.

In addition, the bylaws of Peigan Crossing can be amended, pursuant to section 62 of the bylaws, by special resolution. Hence, even if the bylaws did not previously authorize the corporation to seek a land use redesignation, the bylaws have been effectively amended to allow the application to be made.

Essentially, upon the acquisition of a unit(s) in a condominium plan, the owner of the unit(s) becomes subject to the decisions of the condominium corporation and both the Act and bylaws provide that decisions need not be unanimous. To the extent that an owner might seek to challenge the corporation's authority, their remedy is by way of arbitration or

¹ "37(1) A corporation is responsible for the enforcement of its bylaws and the control, management and administration of its real and personal property and the common property."

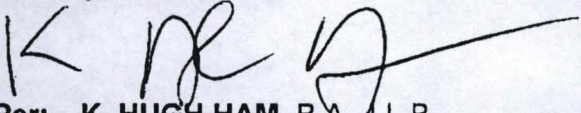
mediation pursuant to section 65 of the bylaws or by way of a challenge in the Courts.

Subsequent to the passage of the Special Resolution, the land use application has changed but specific notice of that change was provided to all unit owners at the AGM and no objections were raised by any owners. Latter, Mr. Hibbard apparently changed his mind, as he is entitled to do, but the remaining owners, who represent more than 75% of the owners (15/16) and more than 75% of the units (17/21), have confirmed that they wish to proceed with an I-B application. Consequently, the requirements of a special resolution still appear to be met.

We trust the above is satisfactory, however please do not hesitate to contact our office.

Sincerely,

Municipal Counsellors

A handwritten signature in black ink, appearing to be 'K. HUGH HAM', written over a horizontal line.

Per: **K. HUGH HAM, B.A., LL.B.**
Barrister & Solicitor