

NF by-law review & pellet stove option information

From: melissa . (melissa@fgpm.com)

To: melissa@fgpm.com

Date: Friday, November 4, 2022 at 01:56 PM EDT

Good Afternoon everyone,

Below is a legal review by the attorney consulted regarding the obligation to repair the chimneys as well as the structure of the special meeting. Essentially the association has an obligation to repair, but can not repair unless 2/3 of the owners approve the expense.

Attached is the summary of a second option which is a significantly less expensive option to transition to pellet stoves in units 1 to 40. There have been threats of litigation by some owners if this option is implemented. While pellet stoves have many advantages, they are not the same as wood stoves.

During the last year, the manager and board looked at multiple options to the chimney repair. This is a viable option according to White Mountain Stove Shop and the North Conway Fire Chief.

We have received communication from multiple owners asking about it. In response to that and in consultation with the same attorney, it is being released for your information.

There was a third option to demo chimneys and install class A chimneys within a wooden structure. This was determined to not be cost effective after looking at the material costs.

See you on November 12, 2022.

Lisa Venditti

From: Nicholas Wright <nwright@bkwlawyers.com>
Sent: Friday, October 14, 2022 5:45 PM
To: Lisa Venditti <lvenditti@cpmproperties.net>
Cc: Lisa Cote <lcote@bkwlawyers.com>
Subject: by-law review

Good Afternoon Lisa,

It was a pleasure talking with you again. I took a look through the by-laws pulled some of the language for you.

Pursuant to Article III, Section 3.1, you govern the condominium at the direction of the Unit Owners Association, but also consistent with the by-laws and Declaration:

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Association and the Clerk shall keep the minutes of the meeting and shall record all transactions occurring and all resolutions adopted at the meeting. Roberts Rules of Order shall govern the conduct of all meetings of the Unit Owners Association when not in conflict with the Declaration, these By-Laws or the Condominium Act.

ARTICLE III

BOARD OF DIRECTORS

3.1 Powers and Duties. The affairs and business of the Condominium shall be managed by a Board of Directors (sometimes hereinafter referred to as the "Board") which shall have all of the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things as are by the Condominium Act or by these By-Laws directed to be exercised and done by the Unit Owners Association. The Board of Directors shall have the power from time to time to adopt any Rules deemed necessary for the enjoyment of the Condominium provided that such Rules shall not be in conflict with the Condominium Act, the Declaration or these By-Laws. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters which might arise between meetings of the Board of Directors. In addition to the general duties imposed by these By-Laws, the Board of Directors shall have the power to, and be responsible for, the following:

- (a) Preparation of an annual budget, in which there shall be established the assessment of each Owner for the Common Expenses;
- (b) Making assessments against Owners to defray the Common

You also have specific duties to prepare the annual budget which establishes each owners' assessment, make assessments against each owner for the maintenance and administration of the condominium, and ensuring that the condominium is maintained:

The Board of Directors may delegate to one of its members the authority to act on behalf of the Board of Directors on all matters which might arise between meetings of the Board of Directors. In addition to the general duties imposed by these By-Laws, the Board of Directors shall have the power to, and be responsible for, the following:

- (a) Preparation of an annual budget, in which there established the assessment of each Owner for the Common Expenses
- (b) Making assessments against Owners to defray the Expenses of the Condominium, establishing the means and method collecting such assessments from the Owners, collecting said assessments, depositing the proceeds thereof in a bank deposit which it shall approve, and using the proceeds to carry out the administration of the Property. Unless otherwise determined by the Board of Directors, the annual assessments against each Owner proportionate share of the Common Expenses shall be payable in monthly installments, each such installment to be due and payable in advance on the first day of each month for said month.
- (c) Providing for the operation, care, upkeep, replacement and maintenance of all of the Common Area and services of the Condominium.

It is on this language some owners rely upon to argue that the Board has an obligation to ensure the chimneys are repaired because it is the duty of the Board to maintain the condominium. However this by-law must be read in conjunction with New Hampshire's Condominium Statute:

356-B:37 Meetings. –

1. Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the association. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting, provide to each unit owner notice of the time, place, and purpose or purposes of such meeting in conformity with RSA 356-B:37-a. The minimum time to give notice may be reduced or waived for a meeting called to deal with an emergency. Purposes of the meeting shall include any budget changes or proposal to remove an officer or member of the board of directors. The secretary or other duly authorized officer of the unit owners' association, who shall also be a member of the board of directors of the unit owners' association, shall prepare an affidavit which

shall be accompanied by a list of the addresses of all unit owners currently on file with the association and shall attest that notice of the association meeting was provided to all unit owners on that list in a manner conforming to RSA 356-B:37-a. A copy of the affidavit and unit owners list shall be available at the noticed meeting for inspection by all owners then in attendance and shall be retained with the minutes of that meeting. The affidavit required in this section shall be available for inspection by unit owners for at least 3 years after the date of the subject meeting.

II. An association shall hold a special meeting of unit owners to address any matter affecting the unit owners or the association if its president, a majority of the board of directors, or unit owners having at least 33 percent, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the special meeting, the purpose of which shall be to present the issue to fellow residents and unit owners and to vote on any proposal set forth in the meeting notice. Only matters described in the meeting notice required by RSA 356-B:37-a may be considered at a special meeting.

III. Except as otherwise provided in the bylaws, meetings of the association shall be conducted in accordance with the most recent edition of Roberts' Rules of Order Newly Revised.

IV. Unit owners shall be given a reasonable opportunity at any meeting to comment regarding any matter affecting the association.

V. The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, as provided in RSA 356-B:37-b.

VI. The secretary or other designee duly authorized by the board of directors shall take minutes of all meetings held in accordance with this section and RSA 356-B:37-c. The board of directors shall make copies of the minutes of all meetings available to the unit owners within 60 days of the meeting or 15 days of the date such minutes are approved by the board, whichever occurs first. The association may opt to provide the minutes electronically or publish them on the association website, in which case the owners shall be informed of the web address. An electronic or paper copy of all meeting minutes shall be available to the unit owners for at least 3 years after the date of the meeting. The board shall respond to a unit owner's written request for the minutes within 15 days of receipt of the request.

VII. Meetings for small condominiums shall use the following procedures:

(a) Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the association. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting, provide to each unit owner notice of the time, place, and purpose or purposes of such meeting. The minimum time to give notice may be reduced or waived for a meeting called to deal with an emergency. Purposes of the meeting shall include any budget changes or proposal to remove an officer or member of the board of directors. The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process.

(b) The secretary or other designee duly authorized by the board of directors shall take minutes of all meetings. The board of directors shall make copies of the minutes of all meetings available to the unit owners within 60 days of the meeting or 15 days of the date such minutes are approved by the board, whichever occurs first. The association may opt to provide the minutes electronically or publish them on the association website, in which case the owners shall be informed of the web address. The board shall respond to a unit owner's written request for the minutes within 15 days of receipt of the request.

Source. 1977, 468:1. 1990, 80:1. 1993, 186:1, eff. June 9, 1993. 2009, 184:1, eff. Jan. 1, 2010. 2016, 311:2, eff. Aug. 1, 2016. 2017, 140:1, eff. Aug. 15, 2017. 2018, 319:1, eff. Aug. 24, 2018. 2020, 3:2, eff. Apr. 10, 2020.

And,

356-B:40-c Adoption of Budgets and Special Assessments. –

I. The board of directors, at least annually, shall adopt a proposed budget for the unit owners' association for consideration by the unit owners. Not later than 30 days after adoption of a proposed budget, the board of directors shall provide to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10 days or more than 60 days after providing the summary for a meeting of the unit owners to consider ratification of the budget. Unless at that meeting 2/3 of all unit owners or any larger number specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the unit owners continues until the unit owners ratify a subsequent budget.

II. The board of directors, at any time, may propose a special assessment. Except as otherwise provided in paragraph III, the assessment is effective only if the board of directors follows the procedures for ratification of a budget described in paragraph I and the unit owners do not reject the proposed assessment.

III. If the board of directors determines by a 2/3 vote that a special assessment is necessary to respond to an emergency:

(a) The special assessment becomes effective immediately in accordance with the terms of the vote.

(b) Notice of the special assessment shall be provided promptly to all unit owners.

(c) The board of directors may spend the funds paid on account of the special assessment only for the purposes described in the vote.

IV. For the purposes of this section, an "emergency" means a situation that requires immediate action by the board of directors where a danger to the structural integrity of the common areas is discovered or to the life and safety of property unit owners or as required by a court order or to respond to any legal or administrative proceeding brought against the association that could not have been reasonably foreseen by the board in preparing and distributing the annual operating budget.

Source. 2016, 311:2, eff. Aug. 1, 2016. 2018, 186:1, eff. Aug. 7, 2018.

It is the Board's responsibility to propose a budget – which would include the costs for the chimney repairs. However it is the Unit Owners' responsibility to ratify it. If 2/3rd of the Unit Owners reject the budget, then the prior budget remains in effect until a new budget is ratified. Some Unit Owners may complain that the rejection of the budget causes maintenance and operational issues, which in this case would include the chimneys, to go undone. That would be correct, but it would not mean that the Board had abdicated its responsibility. The actions contemplated in the budget can only be undertaken if the budget is passed. You cannot do the upkeep and repairs without the money. The Unit Owners ultimately control the money through the budget. In fact, should some Unit Owners threaten the Board with suit, it is actually the Unit Owners that have breached a duty and are at fault:

356-B:41 Upkeep of the Condominium; Warranty Against Structural Defects. –

I. Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (a) to the unit owners' association in the case of the common areas, and (b) to the individual unit owner in the case of any unit or any part thereof.

I-a. No unit owners' association, its agents, or its employees shall willfully enter into the unit of a unit owner without providing prior notice to the owner, other than for emergency purposes.

I-b. No unit owner, tenant, or other person occupying a condominium unit shall willfully refuse the unit owners' association, its agents, or its employees access through a condominium unit as is necessary to enable them to exercise and discharge their respective powers and responsibilities at a reasonable time after notice which is adequate under the circumstances. But to the extent that damage is inflicted on the common areas or any unit through which access is taken, the unit owner causing the same, or the unit owners' association if it caused the same, shall be liable for the prompt repair thereof.

II. Notwithstanding anything in this section to the contrary, the declarant shall warrant or guarantee, against structural defects, each of the units for one year from the date each is conveyed, and all of the common areas for one year. The one year referred to in the preceding sentence shall begin as to each of the common areas whenever the same has been completed or if later, (a) as to any common area within any additional land or portion thereof, at the time the first unit therein is conveyed, (b) as to any common area within any convertible land or portion thereof, at the time the first unit therein is conveyed, and (c) as to any common area within any other portion of the condominium at the time the first unit therein is conveyed. For the purposes of this paragraph, no unit shall be deemed conveyed unless conveyed to a bona fide purchaser. For the purposes of this paragraph, structural defects shall be those defects in components constituting any unit or common area which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration, or replacement. Nothing in this paragraph shall be construed to make the declarant responsible for any items of maintenance relating to the units or common areas.

Source. 1977, 468:1. 2006, 56:1, eff. June 23, 2006.

The Unit Owners are the ones whom ultimately hold the duty to maintain the common areas. If the Unit Owners fail to pass a budget and repairs are not conducted they have only breached a duty they owed to themselves. The Board only acts upon their direction and that direction comes in the form of approving the budget.

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Owners Association by the Condominium Act. Except as to those matters which the Act specifically requires to be performed by the vote of the Unit Owners, the administration of the Condominium shall be performed by the Board of Directors (as more particularly set forth in Article III).

2.2 Voting. Each completed Unit whether owned or rented by the Declarant or whether owned or rented by another person shall be entitled to one vote. Since a Unit Owner may be more than one person, if only one of such persons is present at a meeting of the Association that person shall be entitled to cast the vote appertaining to that Unit. But if more than one of such persons is present, the vote appertaining to that Unit shall be cast only in accordance with the agreement of a majority of them, and such consent shall be

The budget which includes these repairs needs to be approved by the Unit Owners Association. The Board simply provides the administration and management of those tasks once they are approved in the budget.

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Northface Condominium Association Pellet Stove Option

Option 2: Building 2 & 3: Insert Pellet flues for 1st & 2nd floor in existing chimneys. Go through roof on third level.

	Per Stack	Total	Per Unit
Install 2, 4 inch liners in existing with pre-wrapped installation	\$ 4,763	\$ 38,104	
Install through roof, pellet chimney	\$ 1,648	\$ 13,184	
Carpentry work in attic if needed	\$ 2,000	\$ 8,000	
Management oversight at 5%		\$ 2,964	
Contingency		\$ 5,929	
Total:	\$ 8,411	\$ 68,181	\$ 1,550

Pros:

- Timing - could be completed sooner.
- Allows use of existing thimbles & hearths
- Lower cost per unit for both interior and exterior repairs.
- Pellet stoves are viewed as safer to operate.
- Some pellet stoves can be operated remotely.

Cons:

- It isn't a wood stove and lacks the same atmosphere.
- Pellet stoves require electricity to operate.
- Litigation threat

Interior Upgrades

Because pellet stoves require significantly less clearance, in MOST cases, an owner would be able to simply replace their wood stove with a pellet one and install the appropriate piping to the thimble. Inspection and approval by the fire department would be required.

Costs are estimated at \$1999 to \$5999 depending on stove and function. This could be done at any time after the flues are installed in Bldg. 2 & 3.

Questions:

Would the association allow:

Building 1 & 4 unit owners to pay for class A thimble install on their own and continue with wood stove	\$ 2,100	per unit
3rd floor owners in Bldg. 2 & 3 to pay to upgrade through the roof chimney to wood stove compliant	\$ 3,491	per unit