**Owners Meeting to Discuss Results of 2023 Engineering Study**

March 14, 2024

Carina Pina of Premier Property Solutions and board members introduced themselves. Ginny Tritschler introduced David Uitti of Mirrone, Shaughnessy & Uitti, LLC. David explained that the board contacted him after noticing leaks and leak-related issues. He recommended investigation by an engineering firm. If they find damages over a certain dollar amount, then David recommended investing in a lawyer to pursue further. The engineering firm did water testing and removed some siding on 9/14/23 and 12/27/23. They discovered water infiltration through the building envelope. Since then, a complaint has been filed and the defendants have been served. The defendants are Swampscott Living, LLC and O’Sullivan Architects, Inc, specifically Joseph Walsh and David O’Sullivan. The counsel representing Swampscott Living has contacted David to say they have filed an insurance claim. Other defendants may be added to the lawsuit depending on what else is found. The next step is for the defendants to file an answer to the complaint. This is due within 20 days of when the complaint was filed. David will reach out to their counsel to see if they want to look at the damage. The hope is that this will go to mediation and result in a settlement rather than going to trial. There will also be a phase of interrogatory discovery to gather information from the defendants.

**Questions from attendees and answers:**

* Was an agreement signed with the developer not to sue?

*The developer drafted an agreement and the board refused to sign it.*

* If the developer files a claim with their insurance company, does this revert to the building’s master insurance policy?

*No*

* Was all the construction and foundations in all three buildings looked at?

*The engineers did spot checks on the building envelope and discovered leaks through the foundation.*

* What is the timeline if other problems are discovered?

*It will relate back to the date the lawsuit was filed. There is a statute of repose which states that claims on new construction have to occur within six years of when the construction was completed and open for use. The statute of limitations is three years from when one first knew or should have known there was a problem.*

* Are the damages covered by the complex’s master insurance policy?

*No. If the condo were to submit claims to our insurance company they would be thrown out, so the only recourse is to sue those responsible for the construction of the complex.*

* What would happen if the problems don’t get repaired?

*Water degrades the siding of a building and can become a systemic problem.*

* How does the lawsuit get paid for?

*This is a decision that the board will make. The aim is to collect a judgment or settlement that will cover the cost of the repairs as well as legal fees.*

* Should these problems have been caught by the town inspector?

*Yes, but they weren’t. With multi-family construction, the architect or design constructor often does the inspections because the town doesn’t have the resources to do it themselves. The architect or design constructor submits affidavits to the town who then issues the certificate of occupancy. In this case, the architect, David O’Sullivan submitted the affidavits and did not find the water infiltration issues.*

* How do we address water continuing to get in the building while the lawsuit progresses?

*The board can make the decision to make repairs before the lawsuit ends, which arrests the damage and crystallizes what the actual problems are. We can get loans to pay for this and then the loans could be paid back out of pocket before a settlement is reached.*

* Can people sell their units during this time?

*Yes, but if the buyer is getting FHA financing they will be asked on the questionnaire if there is any pending litigation which may then hold up the financing.*

* Will we bid out the job to fix the issues and share bids with owners?

*Yes. The board will solicit bids and keep owners informed.*

* Is there an obligation to mitigate the problems during the lawsuit?

*David recommends making the repairs sooner rather than later using loans.*

* Will Premier be more involved in decisions?

*Decisions will primarily be made by David in collaboration with the board.*

* Will the engineering reports be made available to all owners?

*In cases such as these, information is made public through legal documents. We don’t want opposing counsel to have access to the engineering reports.*

* How do we know the engineering firm looked at everything?

*They didn’t because it is too costly to do so, but through their spot checking they could get a pretty clear idea of what is going on. The board gave the engineering firm a list of areas with water damage as well as other concerns.*

* Will owners be given regular updates about how the lawsuit is proceeding?

*Yes. We will know soon if the defendants are willing to engage and the board will keep owners updated as things progress.*

* Will Premier be involved in soliciting bids?

*The board hasn’t decided yet.*

* Will there be a special assessment?

*Most likely yes in order to get the problems fixed and lawyer fees paid while the lawsuit progresses.*

* Can legal fees be recouped?

*Usually not, although there is a MA law stating that if it is discovered that the defendants engaged in fraudulent activity a claim can be brought against them in which legal fees could possibly be recouped. So far David hasn’t discovered anything that would be considered fraudulent.*

* What will a special assessment cost per unit?

*The cost of the total assessment is divided by the beneficial interest of each owner.*

* Will David send interrogatories to the town inspector?

*It is generally a lost cause to go after the town inspector because they aren’t bound by errors that an architect or developer makes.*

Following this conversation, the board was given a petition signed by several owners requesting a meeting with the board to discuss the most recent HOA increase as well as other costs, the reserve, and other concerns. The board will review the petition and respond.