

ANNUAL MEETING OF THE
MEMBERSHIP OF THE
FIRST WESTWIND AT VAIL CONDOMINIUM ASSOCIATION, INC.
August 25, 2007

The meeting of the membership of the First Westwind at Vail Condominium Association, Inc., was held on August 25, 2007, and was called to order by President Jim Beedie (305 & 404) at 9:00 AM MDT. Mr. Beedie presided as chairman of the meeting and Pat Zetler as acting secretary.

Jeff Jacobs, Vail Management (VM), took role call. All units were represented in person or by proxy. A quorum was therefore declared in accordance with Association By-Laws.

The first order of business was to approve the minutes for last year's annual meeting of the Association. Copies of these minutes had previously been circulated to the membership. No additions or corrections were made. Motion was made to approve the minutes, seconded, and passed unanimously by voice vote.

Jim Beedie presented some opening comments on the agenda which had been previously distributed to all members. The agenda for the meeting is attached and made a part of the minutes. Jim gave a brief history of the Westwind and pointed out that there have been differences of opinion over the years but we have always found a way to work them out. He stated that we should be able to address differences in a business and unemotional fashion.

Jim Beedie introduced John Dunn and Rebecca Fischer, attorneys for the Association, who have researched and have given opinions to the Association on the

voting percentage requirements and the Colorado Common Ownership Interest Act (CCIOA).

The first item to be discussed and voted on by Association membership was a proposed change on voting percentage requirements from 85% with 100% of the mortgagees presently called for in the Declarations to 67% of ownership and zero percent mortgagees. Attorneys Dunn and Fischer gave their interpretation of CCIOA voting percentages as they apply to the Westwind. John Dunn read from a section of the CCIOA provisions “that an amendment to the declarations or by-laws authorized by this section must be made in accordance with the original declarations unless the percentage requirement is changed.” You may also amend the declaration by going to court but unless you do, the first sentence applies. The Association’s original Declarations state 85% required. The 67% is not automatic.

Discussion followed with comments from Al Hanna (103 & 407), Walter Yeates (205), Bob Wainger (107), Jeff Holbrook (201), Eldon Ghent (206), Al Litwak (109), Roger Marce (105 & 301), Sue Congalton (307), Jim Zetler (101), Mark Johnson (306 & 403), Don Meier (204 & 209), Ed Davenport (308), Wendi Hill (208), Joe Laurin (202) and Jim Beedie (305 & 404) with concerns expressed for protection of owners and mortgage holders, the Association’s ability to attract potential developers for building redevelopment, and potential tax consequences. In summary, counsel explained that voting on a percentage change would be the first step. If the change was approved by 85% of the owners, it would become automatic. If approved by 67% of the owners, the next step would be to petition the court which would approve the change as long as fewer

than 34% of the ownership objected. At the same time, the court would be petitioned to eliminate the mortgagee approval requirement.

Motion was made by Don Meier (204 & 209) and seconded by Bob Wainger (107), to approve the First Amendment to the Condominium Declarations, Sections 12.1 and 12.4 of Article XII and Section 14.1 of Article XIV. A copy of the proposed amendment is attached and made a part of the minutes.

Motion was made by Al Litwak (109), seconded by Al Hanna (103 & 407), to table the voting on the change to the voting requirement until further research can be done. A voice vote was taken and recorded by unit ownership percentage on the motion to table and motion failed. The recorded tabulation of the vote is attached to and made a part of these minutes. .

Voting was tabulated by voice vote on the motion to approve the First Amendment to the Condominium Declarations made by Don Meier (204 & 209) and seconded by Bob Wainger (107). Motion failed on voice vote to achieve 67% approval with negative votes totaling 40.04721%. The written tabulation is recorded by unit ownership percentage and is attached to and made a part of these minutes.

Attention was then turned to other CCIOA provisions grouped into Levels 1, 2, and 3. Handouts outlining these provisions were given to each owner. A copy of the handouts is attached to and made a part of these minutes.

Level 1 consisting of two provisions must be voted on and requires a 67% approval. Discussion followed and the Level 1 provisions were adopted by unanimous voice vote.

Level 2 provisions are mandatory and did not require a vote.

Level 3 requirements were then discussed with concerns being expressed on audit and quorum requirements and powers and duties of the Board by Bob Wainger (107), Sue Congalton (307), Don Meier (204 & 209), Al Hanna (103 & 407), Ron Peterson (304), Roger Marce (105 & 301), Jeff Holbrook (201), Sol Gordon (108), Joe Laurin (202), Mark Johnson (306 & 403), and Ed Davenport (308). Attorneys Dunn and Fischer addressed various legal questions by owners. Attorneys pointed out that some requirements could be handled by our By-Laws and others could not. They also pointed out that the requirements were very complicated and that there seemed to be contradictions and various interpretations to the requirements.

After several attempts at coming to proper verbiage, a motion was made by Roger Marce (105 & 301), seconded by Al Hanna (103 & 407), to table the issue with urging to the Board to appoint a committee to solicit the will of the ownership on each issue. Roger Marce (105 & 301) volunteered to head up such a committee. On voice vote the motion passed with two owners in opposition, Meier (204 & 209) and Laurin (202).

Motion was made by Don Meier (204 & 209), seconded by Bob Wainger (107), that the Westwind Association will not be responsible for any costs or legal fees related to the Level 3 investigation. Motion passed by unanimous voice vote.

Jim Beedie presented the financial report of the Association. As the budget now stands, next year's assessment will not be increased. Discussion followed. Motion was made by Ron Peterson (304), seconded by Al Hanna (103 & 407), to approve the financial report. A copy of the Balance Sheet and Income & Expense Statement / 2007-08 Budget is attached to and made a part of the minutes.

On Al Hanna's motion (103 & 407), seconded by Jeanne Harris (401), an amount equal to \$5,000 - \$10,000 (amount to be fixed after consultation with counsel and the amount to be decided within two weeks) will be added to the budget to cover projected legal fees. This may result in a small increase in the assessments. Motion passed by unanimous voice vote.

Jim Beedie discussed the upcoming window/sliding glass door replacement and building painting. Units having the original windows and sliding glass doors and which have not been replaced previously will be scheduled. Motion made and seconded to proceed with the replacement windows and the painting of the building in the summer of 2008. A minimum of three bids are required before selecting a contractor. Motion passed by unanimous vote.

Steve MacDonald (VM) presented the management report of Vail Management referring to the package given to each owner which contained financial information and a detailed website and marketing review. (Copy attached to and made a part of these minutes.) A new company, Search Engine Optimization, has been selected to review marketing via the Internet and provide help in getting the best possible placement of advertising of the Westwind for owner rentals. Dawn Moe (VM) presented information on Westwind's website design and future marketing strategies.

Discussion followed on the quality of paper products, linens, and glassware that is being used in rental units. It was felt that better quality products are needed for high-end renters. Vail Management will investigate these recommendations. It was pointed out that anyone with suggestions in this regard should speak with Vail Management any time during the year.

Al Hanna (105 & 407) questioned the return of excess funds to Association owners, Jim Beedie stated that all excess funds revert to reserves automatically and no funds are returned to owners. Al Hanna (105 & 407) also questioned whether any of these funds were returned to owners selling their units. This has never been done, and Steve MacDonald (VM) also stated that he had never seen it done in the Eagle County.

Al Hanna (103 & 407) addressed the issue of building insurance. Steve MacDonald (VM) stated that the building insurance issue had already been reviewed and coverage increased. The Association now has \$17.7 million replacement cost insurance. The additional premium is reflected in the budget.

Al Hanna (103 & 407) requested that a committee be formed by the Board to design the criteria that should go into a replacement building. Jim Beedie stated that no Association monies for legal fees or other costs incurred by the committee would be allocated for this project, and that Al Hanna should report directly to Association membership. Motion was made by Don Meier (204 & 209), seconded by Ed Davenport (308), that Al Hanna could form a committee for the purpose of designing criteria for a replacement building. The committee would not report to the Board but directly to the ownership, and no Association funds would be expended for this endeavor. Motion passed by unanimous voice vote.

Jim Beedie presented a slate consisting of five new nominees for election to the Board with Jim acting as a sixth member to assist with the transition:

Ron Peterson (304)

Joe Laurin (202)

Jim Johnson (306)

Chris Jones (405)

Jonathon Schwartz (408)

Don Meier (204 & 209) moved, Ed Lampert seconded (102), that Bob Wainger (107), be nominated in lieu of Jonathan Schwartz (408) as one of the five new Board members. Jim Beedie agreed to be an ex-officio (non-voting) Board member so as not to be in violation of Association By-Laws. When Jim completes the help in transition, Bob Wainger will replace him.

Vicki Marce (105 & 301) moved that the nominations be closed, seconded by Raeann Lampert (102). On motion of Ed Lampert (102), seconded by Raeann Lampert (102), the slate of officers as outlined above be approved. Motion passed by unanimous voice vote.

Motion was made by Sue Congalton (307) and seconded by Jim Zetler (101), that the Association membership approve the actions of the Board of Directors for the past year. Motion passed unanimously. Sue Congalton (307) expressed gratitude for the time and effort of Jim Beedie in the effective handling of the very difficult issue of voting requirements and building redevelopment.

The date of next year's annual membership meeting was discussed. August 23, 2008 (Saturday), was decided as the date.

Ed Lampert (102) commended Jim Beedie for agreeing to stay on the Board for another year or until an easy transition can be made. Wendi Hill (208) commended Vail Management on their excellent management of the building this past year.

There being no further business to come before the membership, the meeting was closed on motion of Jim Zetler (101), seconded by Don Meier (204 & 209) at 11:45 AM MDT.

Respectfully submitted,

Pat Zetler, Acting Secretary

VOTING PERCENTAGE REQUIREMENT

- Westwind current requirement – 85% of the owners plus 100% of mortgagees.
 - CCIOA – 67% of owners and 67% or less of mortgagees.
1. Does CCIOA allow the Westwind Owners to change the Voting Percentages in the declaration to 67% of the Owners and 67% or less of the mortgagees?
 2. From a redevelopment prospective is it better to have:
 - i. 85% of the owners plus 100% of the mortgagees or
 - ii. 67% of the owners and 67% or less of the mortgagees.
 3. What are the legal risks of changing to 67%
 - Constitutionality lawsuit in Colorado State Court and/or Federal Court.

OTHER CCIOA PROVISIONS

1. The Other CCIOA provisions are grouped into 3 levels:
 - Level 1 has 2 provisions which require a 67% vote. Counsel tells us that in order to be in compliance with the Colorado law we must adopt these.
 - Level 2 has 5 provisions which are automatic. The law says we must follow these provisions and no vote is necessary.
 - Level 3 has 10 provisions which we can adopt with a 67% vote.

OWNER DECISION FACTORS

- 1.** Economics of the deal-If owner sells or stays
- 2.** Risks involved with the deal
- 3.** Tax effect
- 4.** Views
- 5.** Location of new unit
- 6.** New unit operating and real estate taxes
- 7.** Replacement and substitute housing
- 8.** Storage of furniture
- 9.** Lost of rental income
- 10.** Desire to keep the Westwind like it is
- 11.** Generation issues-older owners not wanting to move during perhaps the last years of their skiing careers.
- 12.** Comfort with the developer

OTHER CCIOA PROVISIONS

The other CCIOA provisions are grouped into 3 levels as discussed below.

LEVEL 1

- Level 1 – These provisions must be voted on (67% requirement) and must pass.
- The Westwind owners must vote to adopt these provisions or we will be in violation of Colorado Law.
- The first provision requires:
 - The Association to encourage Alternative Dispute Resolution and adopt a written procedure for resolution of disputes between owners and the Association. Rebecca's firm has provided us with provisions for both.
 - Alternative Dispute Resolution is encouraged but not required.
- The second provision requires:
 - Some very basic requirements for the rental management company. These require the Management Company to:
 - Have at least \$50,000 of fidelity insurance
 - Westwind funds must be in a Westwind account(s)
 - Annual financial statements must be prepared.

LEVEL 2

Colorado Law requires every Association including the Westwind to follow these provisions. There is no vote required. The Westwind must follow these provisions. There are 5 level 2 provisions:

- **Attorney's Fees**- The court will award attorney fees to the prevailing party. There is nothing for the Westwind to do.
- **Disclosures to Owners** – The law requires that within 90 days of fiscal year end, the Westwind must provide some basic information to owners. This includes:
 - Date of Fiscal year
 - Operating budget
 - Assessments
 - Financial statements
 - Recent audit
 - List of insurance policies
 - Bylaws, rules etc.
 - Minutes of all meetings
 - Governance policies
- **Governance Policies** – The Westwind must have some basic policies concerning:
 - Collection of unpaid assessments
 - Board members conflict of interest
 - Conduct of meetings
 - Enforcement of declaration, rules etc.
 - Inspection of association records by owners
 - Investment of reserve funds
 - Procedure for dispute resolution

- **Meetings.**

Adds rules for meetings of owners and board as follows:

- Special meetings of owners may be called by unit owners having 20%, or lower percentage stated in bylaws, of votes. Notice of special meeting (by mailing and posting) must be given no less than 10 days nor more than 50 days before meeting. *Current Westwind bylaws do not provide for calling of special meetings by owners.*
- Meetings of board must be open to owners, agendas made available. Electronic notification encouraged.
- c) Closed sessions permitted to consider employee matters, consultation with or review of communications from legal counsel, investigation of criminal misconduct or other matters subject to constitutional, statutory or judicial requirement of non-disclosure or which would constitute invasion of privacy. No rule or regulation may be adopted in closed session. *No such provision in the Westwind documents.*

- **Owner Education** -

- Must provide annually education as to general operations and rights and responsibilities of owners.

LEVEL 3

The following provisions can be adopted by the Westwind owners if the Owners vote (67% requirement) to fully adopted CCIOA.

- **Time Limit on Challenge.**

- Any challenge to the validity of amendment must be brought within one year.

- **Powers of the Association**

Gives additional powers to associations (by a 67% vote of the owners):

- Expand or improve upon the common elements.
- Buy and sell real and personal property in its own name.
- Grant easements, licenses, leases through or over the common elements.
- Assign right to receive future income, including regular or special assessments, but only if allowed by declaration

- **Powers and Duties of Board.**

Gives powers and protection to, and imposes duties upon, the board of directors:

- Authorizes board to act in all instances on behalf of association except to amend or terminate declaration, elect board members, determine powers or duties or terms of office of board members. *This authorization is currently contained in the Westwind articles of incorporation and bylaws.*
- Limits liability of board members to wanton and willful acts or omissions. *This limitation is not contained in the Westwind articles of incorporation.*
- Makes board members subject to the good faith standards of conduct contained in the Colorado Revised Nonprofit Corporation Act with respect to investment of reserve funds.
- d) Provides that, within 90 days after adoption of budget, copy or summary of it must be mailed to all owners and a meeting set for discussion of it. Deemed approved unless majority of owners (one vote per unit calculated on the basis of square footage) veto the budget at that meeting. *Westwind bylaws now require majority approval of budget at annual meeting.*

- **Audit.**

- Audit required if annual revenues or expenditures of at least \$250,000 and one-third of owners (one vote per unit calculated on the basis of square footage) request it.
- *Westwind has no provision.*

- **Quorums.**

- Unless bylaws provide otherwise, quorum of meeting of owners deemed present if 20% of votes present at beginning of meeting, and quorum of meeting of board deemed present if 50% of members present at beginning of meeting.
- *Westwind bylaws now provide for quorum of one-half of votes in both owners and board meetings (and quorum can be lost if someone leaves).*

- **Voting-proxies.**

- Makes provision for secret ballots and voting by proxy.
- *Westwind declaration and bylaws do not provide for secret ballots. Voting by proxy is permitted by the bylaws*

- **Board Conflicts of Interest.**

- Incorporates conflict of interest rules (generally, any financial interest in a matter) contained in the Colorado Revised Nonprofit Corporation Act.
- *Current Westwind bylaws conflict-of-interest provisions are specific to rentals.*

- **Insurance.**
 - Lists detailed requirements for insurance coverage. Also allows association to adopt policies and procedures relating to submittal of claims, responsibility for deductibles. Association may assess deductible to negligent unit owners.
 - *Westwind declaration addresses insurance in less detail. Westwind declaration does not provide for assessment of deductible.*

- **Association Records.**
 - Lists detailed requirements for maintenance of association records.
 - Among other things, requires that minutes of meeting and record of actions of owners be kept;
 - Puts limits on use of membership list;
 - Allows association to charge owners for copies;
 - Requires that owners have purpose in obtaining copies and that records be relevant to purpose;
 - Limits to three years the time to keep minutes of owners meetings, records of action of owners, written communications to owners.
 - *Westwind doesn't have as detailed requirements.*

- **Excess Funds.**
 - Unless otherwise provided in declaration, excess funds remaining after payment of common expenses and provision for reserves shall be paid to unit owners.
 - *No such provision in the Westwind declaration.*