

Annual Meeting Minutes

Promenade Towers

September 9, 2009

Directors Present: Bruce Hopkins, Leonard Ney, John Rastl, Margie Thomsen, Cynthia Widdows, and Jim Zafirson

Directors Absent: None

1. The meeting was called to order at 7:00 PM in the Promenade Towers Community Room.
2. Roll call was taken with the following results: There were a total of 54 (out of 80) owners either in person (23) or represented by proxy (31). These 54 represented 68.9 percent of ownership interest.
3. Proof of Notice. John Rastl displayed a written notification that was mailed to all owners and postmarked August 21, 2009.
4. Minutes of the September 10, 2008, Annual Meeting were approved as written.
5. Jim Zafirson gave the president's report. Mr. Zafirson noted that we are now getting good reviews of the building's condition from visitors. Even though we completed construction over a year ago, we have continued to make improvements such as the recent remodel of the mail room and library, the painting of all the stairwells by volunteer residents and seal coating the driveways. He said we will continue with a new front entrance sign, new epoxy paint on the concrete floors such as in the service entrance and other improvements. Owners of #225 and #154 asked to have their deck surfaces checked for repair.
6. John Rastl gave the treasurer's report. He said we are about \$5,000 ahead of our planned budget after the first eight months. We only have two owners beyond 60 days late in monthly fees; one of those beyond 90 with a balance of approximately \$1,200. He also explained that the first draft of the 2010 budget is being worked on, and input is welcome. He said expense increases look fairly small and the Consumer Price Index (CPI) for the previous 12 months looks like it will be very close to zero so he anticipates the same fee amounts in 2010 as we have currently. If the budget is adopted by the Board at the October meeting, it then has to be sent to owners, and would automatically be ratified at the next meeting unless rejected by two thirds or more.
7. Old business:
 - a. Fire Sprinklers. An owner asked about the status of fire sprinklers in units. Mr. Zafirson explained that the state passed the law requiring sprinklers in high-rise buildings but grandfathered any existing buildings. The City of Portland however, chose to be more restrictive and require it in all existing high-rise buildings as well. The Fire Department has not set a deadline for completion and due to the economic climate and the impact this installation would have, they are being very patient. Mr. Zafirson explained that our building's original design did provide water standpipes in the halls and sprinklers in all common areas. He noted that the design of the walls, floors and ceilings are such that a fire will be contained in that unit of sufficient time for a fire department response. He also emphasized the importance of maintaining the integrity of the double wall system. Mr. Zafirson said we are planning to add sprinklers inside units at a point when we can afford it. We have one "not to exceed" estimate of \$700,000 and are using that as a budget planning factor. Mr. Rastl said that the

Portland House (which has no sprinklers even in common areas) is starting their installation this year and plan to do the common areas, one floor every year (and they have 10 floors). As they finish common areas of each floor, the unit owners have two years to install sprinklers in their own unit. That would equate to about 12 years from now before they are finished. Mr. Zafirson and Mr. Hopkins discussed why we believe it is much better to have one contractor do all our units. Mr. Zafirson responded to one question saying that we and Portland House have asked our attorneys if we have any other recourse and the attorneys considered the odds very small that anything could be changed in court. Mr. Zafirson closed by reiterating that we are planning to install fire sprinklers in units as required by the city and that we are planning our out-year Reserve budget to accommodate the estimated costs.

b. Unit Inspections. Mr. Zafirson said that about five years ago we instituted a round of unit inspections to look for unsafe conditions that could affect other units or common areas. The inspections centered on water problems including age of water heaters, washing machine hoses, cracked toilets, water shutoffs that didn't work, etc. Last week a burst washing machine hose flooded several rooms and damaged the unit below as well. The Board has decided to begin another round of "unit inspections" most likely to start in the January/February time frame. An inspection checklist will be developed and owners/residents will be given adequate notice before any inspections are scheduled.

8. New business:

a. Amendment to delete the "Right of First Refusal."

(1) Mr. Rastl said the Declaration contains a section described as the "Right of First Refusal." This gives the Association the right to purchase or lease any unit for the same terms as any valid offer received by an owner. The Association has up to 20 days to make this election or it can waive this right. This was added to our Declaration as an Amendment in 1997. We have never exercised this right.

(2) A mortgage loan that is backed by FHA can not be made to an association that contains the "Right of First Refusal" in their condominium documents. This is due to HUD rules that consider that the "Right of First Refusal" could be used to unfairly discriminate.

(3) In the last year, one owner lost a potential sale due to this provision. At least three local realtors have urged us to delete this provision to avoid limiting future sales potential. FHA loans are becoming a bigger portion of all mortgage loans and some believe that other types of loans may begin to use the same rules.

(4) The Board recommends that members vote (YES) to approve deleting the "Right of First Refusal" provision. All of the existing Section 8.5 of the Declaration would be deleted except for three paragraphs that still apply and are not related to "Right of First Refusal."

(5) The President asked if there was any objection to voting by a show of hands. *With no objection, the Amendment was passed unanimously by the 68.9 percent ownership represented at the meeting. A motion was made, seconded and voted by unanimous show of hands that this issue was resolved and would not be voted on by the prepared ballot later in the meeting.*

b. IRS 70-604 Election for 2009.

(1) Mr. Rastl explained that we file our annual taxes on a Form 1120 which has the most beneficial rates for our income. If we have an excess at the end of the year of owner dues over

operating expenses, we could be liable for taxes on that excess as income. This can be avoided if the membership votes that any excess of membership income over membership expenses for the tax year shall be applied against the subsequent tax year member assessments, as provided by IRS Revenue Ruling 70-604. Our CPA recommends we make this an annual election at our annual meeting. The Board recommends a vote to make the election that any excess of membership income over membership expenses, for the tax year ending December 31, 2009 shall be applied against the subsequent tax year member assessments, as provided by IRS Revenue Ruling 70-604.

(2) The President asked if there was any objection to voting by a show of hands. With no objection, *the election was passed unanimously by the 68.9 percent ownership represented at the meeting. A motion was made, seconded and voted by unanimous show of hands that this issue was resolved and would also not be voted on by the prepared ballot later in the meeting.*

c. Election of Board of Directors members. Two Board members with expiring terms were Jim Zafirson, President, and Cynthia Widdows. Jim had volunteered to serve another three year term. The Board had nominated Karen Winslow and Michael Lincourt to fill the remaining two empty seats. *Given that there were three positions open and exactly three and only three nominees to fill them, a motion was made, seconded, and passed unanimously by a show of hands to elect Michael Lincourt, Karen Winslow, and Jim Zafirson to serve on the Board of Directors.* The members present gave a round of applause in appreciation of Cynthia Widdows and Stu Peller who both provided years of dedicated service and who helped make many difficult decisions during the façade construction process. Current Board members are as follows (listed by term expiration).

| | Term Expires |
|-------------------------|--------------|
| Bruce Hopkins | 2010 |
| Margie Thomsen | 2010 |
| Leonard Ney | 2011 |
| John Rastl, Treasurer | 2011 |
| Michael Lincourt | 2012 |
| Karen Winslow | 2012 |
| Jim Zafirson, President | 2012 |

d. The new Social Committee Chairman, Tom Leonhardt, was introduced and he described plans for the September 22 party, a possible day trip to Boston by train and a winter/holiday party for 2009.

9. The meeting was adjourned at 7:45 PM.



John Rastl
Secretary Pro Tem

Attachments

1. Amendment to Declaration
2. Resolution – IRS Ruling 70-604

**SIXTH AMENDMENT TO THE AMENDED AND RESTATED
DECLARATION OF PROMENADE EAST CONDOMINIUM ASSOCIATION
dba PROMENADE TOWERS
Portland, Maine**

The undersigned hereby certify that the following Amendment to the Amended and Restated Declaration and the Bylaws of the **PROMENADE EAST CONDOMINIUM** located in City of Portland, County of Cumberland, Maine, which Amended and Restated Declaration is dated August 31, 1995, and recorded in the Cumberland County Registry of Deeds in Book 12092, Page 001, was duly adopted at the annual meeting of the Unit Owners held on September 9, 2009 by the affirmative vote of 67% or more in interest vote of the Unit Owners.

1. ARTICLE VIII, Section 8.5. of the DECLARATION governing Sales, Leases, and Mortgages of Units is amended and restated as follows:

"Section 8.5 Sales, Leases and Mortgages of Units.

A. No unit owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his unit without including therein the Appurtenant Interests, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or describe therein. No part of the Appurtenant Interests of any unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the unit to which such interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the Appurtenant Interests of all units.

B. Notwithstanding any other provision of this Declaration or the By-Laws, a unit owner may, without the consent of the Board of Directors, license to another unit owner or resident the use of any parking space with respect to which said unit owner has the exclusive right, such license to be upon such terms and conditions as the unit owner shall desire, provided that it expires automatically upon the sale of their unit and provided further that notice of such license is promptly given to the Board of Directors.

C. No unit owner shall be permitted to convey, mortgage, pledge, hypothecate, sell or lease said unit owner's unit unless and until said unit owner shall have paid in full to the Board of Directors all unpaid common charges theretofore assessed by the Board of Directors against said unit owner's unit and until said unit owner shall have satisfied all unpaid liens against such unit, except the lien of a mortgage."

2. **GENERAL.** Capitalized terms shall have the meaning set forth in the Declaration and Bylaws.

Witness the hands and seal of undersigned in our capacities as the President and Acting Secretary of the Promenade East Condominium Association as of September 9, 2009.

PROMENADE EAST CONDOMINIUM
ASSOCIATION

By: [Signature]
James Zafirson, its President

Attest:
By: [Signature]
John M. Rastl, its Acting Secretary

State of Maine
County of Cumberland, ss

October 6, 2009

Then personally appeared before me the above named James Zafirson in his said capacity and acknowledged the foregoing to be his free act and deed and the free act and deed of said association.

Before me,

[Signature]
Notary Public/Attorney at Law
Name: RICHARD STEVEN SMITH

RICHARD STEVEN SMITH
Notary Public
Maine
My Commission Expires Apr 24, 2014



**ELECTION UNDER REVENUE RULING 70-604
EXCESS INCOME APPLIED TO FOLLOWING YEAR ASSESSMENTS**

WHEREAS the Promenade East Condominium Association, Inc. is a Maine corporation duly organized and existing under the laws of the State of Maine; and,

WHEREAS, the members desire that the corporation shall act in full accordance with the rulings and regulations of the Internal Revenue Service;

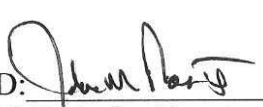
NOW, THEREFORE, the members hereby adopt the following resolution by and on behalf of the Promenade East Condominium Association, Inc.;

RESOLVED, that any excess of membership income over membership expenses, for the tax year ending December 31, 2009 shall be applied against the subsequent tax year member assessments, as provided by IRS Revenue Ruling 70-604.

This resolution is adopted and made a part of the minutes of the membership meeting of September 9, 2009.

PROMENADE EAST CONDOMINIUM
ASSOCIATION

BY: 
James Zafiroson, its President

ATTESTED: 
John M. Rastl, its Acting Secretary