

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan VR 195*,  
2026 BCSC 34

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Docket: S248127  
Registry: Vancouver

**The Owners, Strata Plan VR 195**

**In the Matter of Section 173 of the *Strata Property Act***

Before: The Honourable Justice Elwood

## **Reasons for Judgment**

Counsel for the Petitioner: V.P. Franco

The Respondents, Jonathan Longcroft and  
Henry Verschoof, appearing in person: J. Longcroft  
H. Verschoof

Place and Date of Hearing: Vancouver, B.C.  
August 11, 2025

Additional Written Submissions: September 4 and 9, 2025

Place and Date of Judgment: Vancouver, B.C.  
January 9, 2026

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**I. INTRODUCTION**

[1] The Owners, Strata Plan VR 195 (the “Strata”) petition the court for an order approving a resolution to impose a special levy. The petition is opposed by a group of eight Strata unit holders (the “Dissenting Owners”).

[2] The Beach House, located on York Avenue in Vancouver, is a three-story residential building with 39 strata units. It was built in 1974. There is a single-level garage beneath the building with about 66 parking stalls. The asphalt membrane protecting the concrete slab roof of the parking garage has exceeded its service life and failed. Water is leaking into the garage. Moisture is also seeping up through the floor of the garage.

[3] The Strata began receiving reports in 2015 that the roof membrane was failing and should be replaced within the next five years. The Strata obtained assessments and recommendations from consultants, considered the options, and, ultimately, proposed several versions of a special levy to fund a major restoration project including a full membrane replacement.

[4] Section 108(2) of the *Strata Property Act*, S.B.C. 1998, c. 43 [Act] provides that a special levy must be approved by a resolution passed by a  $\frac{3}{4}$  vote at an annual or general meeting. None of the resolutions put forward by the Strata met this  $\frac{3}{4}$  threshold.

[5] The Strata now applies under s. 173(2) of the *Act* for an order approving a resolution on September 26, 2024, that would raise \$3,400,000 by way of special levy on the basis the money is for repairs that are necessary to ensure safety or to prevent significant loss or damage.

[6] The Dissenting Owners say they do not oppose necessary repairs, but oppose this special levy because: the scope of the project is excessive and goes beyond what is necessary; more economical alternatives supported by the consulting engineers were not presented to the owners for their consideration; the proposed work includes numerous betterments and improvements which would

primarily benefit owners of the ground floor units; a majority of the members on the council that put forward this proposal are owners of ground floor units, which put them in a conflict of interests; and, the special levy will impose a substantial financial burden on the owners.

[7] For the reasons that follow and despite able submissions by the representatives of the Dissenting Owners, I have concluded that the special levy resolution must be approved.

## **II. BACKGROUND**

### **A. The Parking Garage**

[8] The parking garage is constructed out of steel-reinforced concrete. The roof slab is protected by an asphalt waterproofing membrane. The garage structure extends beyond the building footprint on all elevations, forming a buried podium. Planters, concrete patios, walkways, wood fencing and landscaping are installed on top of the podium.

[9] The garage access ramp is located on the north elevation, accessed from the lane behind the building. The parking surface is asphalt-on-grade. The walls are painted concrete. The underside of the roof slab is covered with spray-on insulation. Drainage is provided by a system of drains, pipes and sump pumps.

[10] The roof membrane has exceeded its estimated service life of 30 to 35 years. The membrane has failed on the south elevation of the garage structure. This has allowed water to penetrate the roof slab and enter the garage. The membrane on the north elevation is also showing signs of failure but is leaking less than the south side of the garage, likely because the north elevation of the property sheds water more efficiently than the south side.

[11] The asphalt floor has also exceeded its estimated service life. Moisture is seeping up through the floor slab, particularly in the southwest corner. The asphalt has settled over time and is damaged in places, with potholes, cracks, and uneven walking surfaces.

[12] The drainage system is not managing storm water adequately, resulting in an elevated water table and contributing to the water seepage into the garage.

[13] Various components of the garage are dated or not in compliance with the current BC Building Code. These include the ventilation, lighting, and roof insulation.

**B. Investigations and Reports**

[14] In 2015, a depreciation report observed signs of water ingress into the garage ceiling and possible groundwater seepage into the southwest corner of the garage. The report recommended that the Strata replace the roof slab membrane within the next five years.

[15] In 2016, a building envelope condition assessment report found signs of water ingress in several locations within the garage ceiling and some ground floor units. The report recommended that the Strata review the perimeter drainage system as soon as possible and replace the roof membrane as a second priority.

[16] In 2019, a plumber inspected the patio drainage and rainwater leaders and found water and blocked patio drainpipes that were causing damage to the garage floor asphalt surface.

[17] The owners approved a resolution to conduct repairs to the patio drains and investigate the perimeter drainage system along the south side of the building. Repairs were made to the drainage system, including new sump pumps. Despite these repairs, water continued to seep into the garage.

[18] In August 2020, a geotechnical review confirmed that groundwater was seeping into the garage floor and made recommendations to improve the drainage.

[19] In February 2021, a building code consultant recommended that the Strata: remove the existing asphalt floor and replace it with a new concrete slab with additional under-slab drainage; remove and replace the roof insulation to meet current energy codes; install a supplemental air ventilation unit to properly vent the space; and replace the existing lighting in the garage and add emergency lighting.

[20] In April of 2022, the Strata retained WSP Canada Inc. (“WSP”), an engineering firm, to review and evaluate the condition of the parking garage. WSP prepared an evaluation report and a feasibility study (together, the “2022 WSP Report”). The key findings in the 2022 WSP Report were that:

- a) The roof membrane had failed after exceeding its service life, resulting in water leaking into the parkade and the deterioration of the concrete structure (walls and roof);
- b) The garage floor asphalt slab-on-grade had exceeded its service life and was in poor condition due to long-term water seepage and freeze/thaw cycles, and posed a tripping hazard;
- c) The garage storm water drain system had also exceeded its expected service life and was not managing storm water adequately, resulting in an elevated water table and contributing to the water seepage;
- d) The insulation on the ceiling was loose and falling off in some sections, causing damage to vehicles and property;
- e) The ventilation in the garage was inadequate and not in compliance with the BC Building Code, and posed a health risk; and
- f) The lighting in the garage was poor, with no emergency lighting, and posed a safety risk.

[21] WSP presented three “management strategies” for the Strata to consider in the 2022 WSP Report:

- a) A “monitor and defer” approach: the Strata could choose to defer the repairs and continue to monitor and manage the issues WSP had identified. This approach offered the financial advantages of deferring major repairs, but raised the risks associated with ongoing and accelerated deterioration. WSP cautioned: “At most, the parkade waterproofing work can be deferred for 5 years if annual inspections are completed. If the work is deferred beyond this

- time, concrete deterioration may result in structural issues and unsafe conditions.”
- b) “Strategy 1”, address the most critical issues: the Strata could replace the roof membrane on the south elevation, at an estimated cost of \$1,403,000. This would address the most significant leaks and mitigate the risk of escalating concrete deterioration on the south side of the garage. Given the limited leakage on the north side, WSP expected that the waterproofing replacement on the north elevation could be deferred for three to five years. The scope of the immediate work would necessarily include removing and replacing planters, patios, walkways, fencing and landscaping on south side of the building.
  - c) “Strategy 2”, replace the full roof membrane: the Strata could address all of the identified issues in a single project, at an estimated cost of \$1,980,000. This work would include removing and replacing the overburden on both sides of the building, although the roof slab did not project as far away from the building on the north side as on the south.

[22] Under both Strategy 1 and Strategy 2, WSP recommended several “component upgrades” to replace the ceiling insulation, exhaust fans, garage lighting, and exit doors, as well as installing EV charging stations. WSP also recommended that the Strata retain a geotechnical engineer to provide remedial options and costs to address the drainage issues.

[23] In closing the 2022 WSP Report, WSP stated that: “Based on our understanding of your desire to manage this property for the long term, while allowing more time to raise funds, we expect Strategy 1 will best serve your needs”. The Dissenting Owners characterize this as a recommendation by the consulting engineers. I regard it more as a concluding comment for the consideration of the Strata and its owners. The professional recommendations by the engineers are contained more in the body of the report and summarized in the strategies set out above.

[24] The Strata retained Horizon Engineering (“Horizon”) to conduct a geotechnical review of the drainage issues (the “Horizon Review”). Horizon found that, despite frequent maintenance, the existing drainage system was inadequate to manage the groundwater. Horizon opined that the primary reason for groundwater seeping into the garage was a sand layer beneath the floor slab. Horizon recommended that the Strata remove the asphalt, replace the sand with drain rocks, construct a new concrete floor slab and install a new drainage system. Horizon recommended a gravity draining system over a sump pump system. WSP subsequently endorsed Horizon’s recommendations.

[25] The Strata obtained additional reports, including an arborist report, a conceptual design for the landscaping and a feasibility study for the garage floor replacement.

[26] The council of the Strata (“Council”) considered the various reports and recommendations and decided to replace the full roof membrane, replace the asphalt-on-grade with a new concrete floor slab, install a new gravity drainage system, upgrade components of the garage, and improve aspects of the common property affected by the construction (the “Proposed Work”).

[27] Council instructed WSP to put the Proposed Work out to tender. There were three bids. Council reviewed the bids and chose a bid by Skymark Projects Ltd. (“Skymark”), which was recommended by WSP and the lowest bid. Based on this bid, WSP provided a total recommended budget of \$3,392,411.

### **C. Strata Resolutions**

[28] At an annual general meeting on June 11, 2024 (the “2024 AGM”), the Strata proposed two resolutions with which to raise \$3,400,000 to fund the Proposed Work. This was the first time that the owners were asked to fund major repairs to the parking garage. One of the complaints by the Dissenting Owners is that the owners were not presented with more economical options for their consideration. I will return to this concern below.

[29] The first resolution considered by the owners at the 2024 AGM was to raise the full cost of the Proposed Work by way of a special levy. The second resolution was to raise half of the cost by way of special levy and finance the other half over five years. Both resolutions received the support of more than 50 percent of the votes cast, but less than the  $\frac{3}{4}$  vote required by s. 108(2) of the *Act*.

[30] Following the 2024 AGM, the Strata asked WSP to prepare a summary of their findings and recommendations, which was distributed to the owners.

[31] On August 22, 2024, the Strata held a townhall-style meeting to discuss the proposed repairs. Approximately 26 owners attended the meeting in person or by Zoom.

[32] On September 26, 2024, the Strata held a special general meeting (the “SGM”) and moved two further resolutions to fund the repairs. The first resolution was to approve a special levy of \$3,400,000 to fund the full scope of the Proposed Work. The second resolution was to approve a special levy of \$2,497,000 to replace the roof membrane and carry out related overburden and landscaping work, but not replace the floor slab or add new drainage. The two resolutions both allowed the owners the option of paying the special levy in four installments, due on November 1, 2024, and February 1, April 1, and May 1, 2025.

[33] Both resolutions failed to achieve the required  $\frac{3}{4}$  vote. Twenty-four owners voted in favour of the \$3,400,000 special levy (representing 65 percent of the vote) and 13 voted against. Twenty-five owners voted in favour of the \$2,497,000 special levy (representing 68 percent of the vote) and 12 voted against.

### **III. ANALYSIS**

#### **A. Legislative Framework**

[34] Section 91 of the *Act* provides that a “strata corporation is responsible for the common expenses of the strata corporation.” Common expenses are those expenses “relating to the common property and common assets of the strata

corporation”: s. 1(1). Common property is “that part of the land and buildings shown on a strata plan that is not part of a strata lot”: s. 1(1).

[35] The *Act* provides various means for a strata corporation to discharge its statutory obligation to maintain and repair the common property and common assets.

[36] Sections 96 and 97 authorize a strata corporation to pay ordinary and recurring expenses from its operating fund or a contingency reserve fund (“CRF”). Section 96 stipulates that certain expenses from the CRF may be approved by a majority vote of the owners, while others require a  $\frac{3}{4}$  vote. Section 97 requires that the operating fund be applied as authorized in the budget of the corporation or a  $\frac{3}{4}$  vote.

[37] Section 98 allows for unapproved expenditures out of the operating fund or the CRF, but only “if there are reasonable grounds to believe an immediate expenditure is necessary to ensure safety or prevent significant loss or damage”.

[38] Section 108 authorizes the strata corporation to raise money from the owners by means of a special levy. It does not restrict the purposes for which a special levy may be imposed. Section 108(2)(a) provides that the strata must calculate each strata lot’s share of the special levy, normally based on unit entitlement, and that the special levy must be approved by a resolution passed by a  $\frac{3}{4}$  vote at an annual or special general meeting.

[39] Section 173 of the *Act* provides that, where the number of votes cast in favour of a special levy resolution is more than  $\frac{1}{2}$  the votes cast but less than the  $\frac{3}{4}$  vote required by s. 108(2)(a), the strata corporation may apply to the court for an order approving the resolution, provided that it is to raise money for repairs that are necessary to ensure safety or to prevent significant loss or damage. An order under

s. 173(4) approving the resolution and authorizing the strata to proceed is discretionary. Specifically, s. 173 states:

**173 (1) ...**

(2) If, under section 108 (2) (a),

(a) a resolution is proposed to approve a special levy to raise money for the maintenance or repair of common property or common assets that is necessary to ensure safety or to prevent significant loss or damage, whether physical or otherwise, and

(b) the number of votes cast in favour of the resolution is more than 1/2 of the votes cast on the resolution but less than the 3/4 vote required under section 108 (2) (a),

the strata corporation may apply to the Supreme Court, on such notice as the court may require, for an order under subsection (4) of this section.

(2.1) ...

(3) An application under subsection (2) must be made within 90 days after the vote referred to in that subsection.

(4) On an application under subsection (2), the court may make an order approving the resolution and, in that event, the strata corporation may proceed as if the resolution had been passed under section 108 (2) (a).

[Emphasis added.]

[40] The Court of Appeal interpreted s. 173(2) of the *Act* in *Thurlow & Alberni Project Ltd. v. The Owners, Strata Plan VR 2213*, 2022 BCCA 257 [*Thurlow*], and stated the following three key principles at para. 92:

- a) Section 173(2) permits the court to authorize special levies to effect repairs that are necessary, but does not require that the repairs be immediately necessary, or that the proposed repair be the minimum necessary to address the problem.
- b) Section 173(2) should be read in a manner that permits the strata corporation to determine the timing and method of repair.

- c) Section 173(2) is not intended to place the court in the position of overseeing or managing repairs but, rather, to afford a tool to break a deadlock and permit a simple majority to resolve to effect necessary repairs.

[41] In *Thurlow*, Justice Willcock held that the chambers judge erred in requiring the strata to prove the risk was imminent and the repairs were the minimum necessary to address the risk: para. 94. If the evidence establishes the existence of a risk, and that one reasonable way to deal with that risk is to do the work proposed by the strata, then the threshold in s. 173(2) is overcome: para. 99.

[42] Justice Willcock further held that, once the threshold in s. 173(2) is overcome, the court should consider factors going to the exercise of its discretion to approve the resolution, including:

- a) whether the strata acted in good faith;
- b) whether there were procedural irregularities in the manner in which the resolution was proposed and passed by a majority of the votes cast;
- c) whether the strata acted reasonably on the strength of professional advice in seeking to impose the special levy; and
- d) whether court approval of the resolution would unfairly prejudice the owners in the minority.

*Thurlow* at para. 100.

[43] These principles may be summarized in a two-part test:

- a) On a balance of probabilities, are the repairs necessary to ensure safety or to prevent significant loss or damage, physical or otherwise?
- b) If so, should the court exercise its discretion to approve the special resolution?

*Li v. The Owners, Strata Plan BCS 2884*, 2025 BCCA 196 at para. 11

## **B. Is the Proposed Work Necessary?**

[44] The Dissenting Owners argue that the Proposed Work is excessive and goes beyond what is necessary to ensure safety or prevent significant loss or damage. They identify four aspects of the project which they say are unnecessary: a full membrane replacement; a new floor slab with a new gravity drain system; various upgrades in the garage; and betterments to the common property.

### **1. Full Membrane Replacement**

[45] The Dissenting Owners say that, at present, it is not necessary to replace any portion of the roof membrane except for the southern portion. There is some support for this position in the 2022 WSP Report, at least as of 2022. One of the options that WSP presented at that time was to replace the membrane on the south elevation and defer the north elevation for three to five years.

[46] However, the warning from the engineers in the 2022 WSP Report bears repeating: “At most, the parkade waterproofing work can be deferred for 5 years if annual inspections are completed. If the work is deferred beyond this time, concrete deterioration may result in structural issues and unsafe conditions.”

[47] Two years later, in the summary that it prepared for the Strata in 2024, WSP recommended that the roof membrane be fully replaced “as soon as funds can be raised.” On the other hand, the Dissenting Owners depose that a representative of WSP said at a May 2024 informational meeting that the membrane replacement could be limited to the south side and the north side of the building could be put off “for a few years”.

[48] David Evans, the professional engineer leading the WSP team, acknowledges in his affidavits that replacing the full membrane is not immediately necessary. However, he also confirms that a full membrane replacement is “inevitable and required”. Mr. Evans deposes that deferring the full replacement beyond 2027 (i.e. five years from 2022) would “risk damage to the structural integrity of the building”.

[49] In other words, presenting the owners with the option in 2024 of replacing only the south elevation would not have eliminated the necessity of replacing the full membrane by 2027. Hoping that, despite the advice from the engineers, the membrane on the north side might last beyond 2027 was not a viable option.

[50] Replacing the membrane in two separate projects within a span of just two or three years was unlikely to save the owners any money. Indeed, Mr. Evans deposes that separate projects would only increase the combined cost. Staggered projects would also prolong the disruption for the owners.

[51] More importantly, it is not necessary on an application under s. 173(2) for the Strata to establish that the proposed repairs are immediately required or the minimum necessary to address the problem: *Thurlow* at para. 92.

[52] In *Thurlow*, the Court of Appeal made the point that s. 173(2) gives the court the power to approve a resolution, not the power to draft the resolution. The legislation leaves in the hands of the strata corporation the responsibility to formulate resolutions and determine the timing and scope of repairs: para. 86.

[53] It follows that the Strata was not required to present the owners with the “best” option, the least expensive option, or multiple options to consider by way of resolution. The threshold in s. 173(2) only requires that the resolution for which the Strata seeks approval be one reasonable way to effect necessary repairs: *Thurlow* at para. 99.

[54] The Court should not interfere with the Strata’s exercise of discretion on how to manage its repair and maintenance obligations, provided that Council acted in the best interests of all the owners: *The Owners, Strata Plan VIS114 v. John Doe*, 2015 BCSC 13 [VIS114] at para. 50, citing *Sterloff v. Strata Corp. of Strata Plan No. VR 2613* (1994), 38 R.P.R. (2d) 102, 46 A.C.W.S. (3d) 550 (B.C.S.C.).

[55] The Dissenting Owners argue that Council did not act in the best interests of all of the owners because it promoted a project that would primarily benefit owners of the ground floor units. I disagree. As discussed below, the disputed improvements

to the ground floor patios relate to removing and replacing the overburden on the southern elevation of the garage roof podium. In other words, the alleged benefit to some members of Council arises from replacing the southern portion of the membrane, which the Dissenting Owners acknowledge is immediately necessary and justified.

[56] Viewed in this light, the alleged conflict of interests has no bearing on Council’s decision to replace the full roof membrane. In choosing this option over a staggered repair, Council acted reasonably on the strength of professional advice. It acted in the interests of all owners to have a safe and maintainable garage.

[57] For these reasons, I find that a full roof membrane replacement in a single project is a reasonable way to deal with a demonstrated risk of significant loss or damage from continued water ingress into the parking garage.

## **2. New Floor Slab and Drainage System**

[58] The Dissenting Owners argue that the special levy resolution includes unnecessary work to address the drainage and resurfacing components of the project. They argue that Council withheld more moderate, cost-effective solutions, opting instead to present only the most expensive option. Again, there is some support for this position in the evidence.

[59] Horizon presented a series of remedial options, tabulated according to “A. Capillary Rise” and “B. Drainage”, and “1. None”, “2. Basic”, “3. Moderate”, and “4. Full/Best”. Horizon recommended that the Strata consider option A3 or A4, combined with option B3 or B4. Those options were:

- A3** Removal/Replacement of a limited slab area in the southwest corner of the parkade (\$110,000–\$200,000); or
- A4** Removal/Replacement of the full slab area (\$280,000–\$500,000).

Combined with:

- B3** New Duplex Pump System (\$50,000–\$90,000); or
- B4** New Gravity Drain System (\$120,000–\$250,000).

[60] With respect to the resurfacing work, Horizon advised that the full-slab replacement option (A4) could be implemented in stages, beginning with the southwest corner (A3) and expanding to the remainder of the parkade (i.e. A4) in later years.

[61] The Dissenting Owners argue that the Strata ought to have presented them with the “Moderate” options, which is to say A3 combined with B3, a staged approach to A4 combined with B3, or A4 combined with B3.

[62] The Dissenting Owners argue that the alternate resolutions at the 2024 SGM demonstrate that the new floor slab (A4) and the new gravity drainage system (B4) are unnecessary. In the second resolution presented at that meeting, the floor slab and the drainage system were eliminated entirely, reducing the proposed special levy to \$2.497 million.

[63] As discussed, the test is not whether the resolution for which the Strata seeks approval represents the “best” or the least expensive option. The Strata was not required to present the owners with multiple options to consider by way of resolution. Rather, the test is whether the work proposed by the Strata is a reasonable way to deal with a risk of significant loss or damage.

[64] The engineering evidence is that the full asphalt-on-grade floor slab is past its service life and needs to be replaced. The parking surface is in poor condition. There are accessibility issues and tripping hazards in the garage. Continued patchwork repair is not a viable long-term solution. It may be possible to start by replacing the floor slab in the southwest corner and then expand the replacement to include the remainder of the parkade in later years, as discussed by Horizon. However, given the scope of other necessary work, replacing the entire floor slab at once is a reasonable way to deal with the problem.

[65] The engineering evidence also establishes that persistent drainage issues are contributing to groundwater seepage and damage to the floor slab. The current system of drainage pipes and sump pumps is inadequate. The drainage may be

improved with a new sump pump system, as discussed by Horizon. However, the Horizon Review noted several reasons why a gravity draining system would be the preferred solution: improved long-term performance (and reduced likelihood of failure/flooding); reduced maintenance costs because the system does not rely on machinery that may break and require costly repairs or replacement; and no electricity costs.

[66] The Horizon Review appears to suggest a cost differential between the two drainage systems of between \$30,000 and \$200,000. However, Skymark confirms in affidavit evidence that the gravity draining system would only cost about \$20,000 more than a new sump pump system.

[67] In my view, it was open to Council, acting reasonably, to choose the gravity draining system over a pump system. It was not necessary for Council to present the owners with a choice between the two systems. This Court will not second-guess the decision by Council that a gravity system is the better option for the Strata.

[68] Had the owners approved the second resolution at the SGM, the drainage and resurfacing components of the project would have been deferred. However, this does not mean that those repairs were unnecessary.

[69] The word “otherwise” in s. 173(2) in the phrase “physical or otherwise” encompasses the necessity of acting to avoid economic loss through future increases in repair costs: *Thurlow* at paras. 114 and 116.

[70] Additional repairs to the garage floor slab were inevitable. Addressing both the symptom (surface damage) and the cause (poor drainage) of the problem would eliminate the ongoing cost of repairing the asphalt surface and minimize future maintenance costs.

[71] I find that the plan to replace the floor slab and install a gravity drainage system is a reasonable way to deal with the risk of significant loss or damage from continued water seepage into the parking garage.

### **3. Upgraded Garage Components**

[72] The Dissenting Owners argue that the proposed new exhaust fans, lighting, exit doors, wall paint and below-grade conduits for EV chargers are all “discretionary upgrades”. I disagree.

[73] The engineering evidence establishes that:

- a) the ventilation is inadequate, not in compliance with the BC Building Code, and poses a health risk;
- b) the lighting is poor and there is no emergency lighting, which poses a safety risk; and
- c) the exit doors should be replaced with fire-rated, insulated steel and welded-frame doors.

[74] Painting the garage walls is required because of demolition associated with the necessary work to replace the roof membrane and floor slab.

[75] The Strata has agreed to remove the cost for the EV conduits (\$53,912.24) from the order sought.

### **4. Betterments to Common Property**

[76] The Dissenting Owners are understandably concerned by the total cost of the project, which is now projected to be \$3,392,411. They note that the proposed special levy represents an increase of \$1.42 million, or approximately 70 percent, over the estimate in the 2022 WSP Report. They point out that the current budget for landscaping alone is \$886,900, far exceeding WSP’s earlier estimate of \$132,808.

[77] The Dissenting Owners argue that this dramatic cost escalation is due in large part to the inclusion of unnecessary modernization and betterment elements of the project. They say the project has been developed with an aesthetic and amenity focus—upgrading garage components, modernizing the façade, reconfiguring

common areas, and enhancing ground-floor patios—rather than being tailored to address necessary repairs.

[78] This intention is confirmed, they submit, in the 2022 WSP Report, where the engineers set out their understanding that the anticipated garage repairs are “part of a continued effort to restore, maintain and modernize the building”.

[79] Similarly, at the May 2024 information meeting, the representative of WSP said, “[t]he project presented an opportunity to upgrade the front entranceway and to modernize the entrance and the building generally.”

[80] The Dissenting Owners cite as an example of this approach the proposed accessible front walkway, with a large ramp and a seating area, which the WSP representative described as “part of a cohesive modern design”.

[81] The Dissenting Owners take particular issue with improvements to the front patios, which they say will disproportionately benefit the ground floor units, including:

- a) new fencing around patios where none currently exists, including the eastern entranceway where landscaping is to be replaced with fencing;
- b) privacy fencing between patios where only low planters currently exist;
- c) new stairs and gated entrances to patios enabling direct unit access; and
- d) expansion of usable patio space.

[82] I will address the alleged conflict of interests when I consider the court’s exercise of discretion and whether the Strata acted in good faith. The current question is whether the inclusion of these improvements undermines the Strata’s argument that the special levy is to raise money for necessary repairs to ensure safety or prevent significant loss or damage.

[83] The Dissenting Owners are correct that the total projected cost of the project is significantly more than the estimate in 2022 for a full roof membrane replacement.

However, this increase cannot be attributed in any significant part to the disputed improvements. The 2022 estimate did not include replacing the floor slab or the new drainage system. Also, the 2022 estimate was an estimate for budget purposes and provided before the consultants developed the project design and specifications. The actual cost of any project is determined through the design, specification and tendering process. It is not uncommon for an initial estimate to vary from the actual cost due to inflation, differences between contractors, mobilizing and demobilizing, etc.

[84] The budget for landscaping is a lot of money. Facially, landscaping is not necessary to ensure safety or prevent significant loss or damage. However, it must be remembered that replacing the roof membrane will require the Strata to remove and replace the planters, patios, walkways, and fencing on the roof slab podium. Even a reduced scope of work in which just the south side of the membrane is replaced—which the Dissenting Owners acknowledge is immediately necessary—would require removing and replacing the overburden on the south side of the building. Most, if not all, of the disputed improvements are located on the south side of the building.

[85] In other words, the real cost concern is not with the total landscaping budget, but rather with the additional cost of changes or improvements when the overburden on the south side is replaced: an accessible front walkway, a new bench to sit on, new fencing between patios, and new gates.

[86] I cannot agree that these elements reflect an undue focus on modernizing the building or updating its appearance. In my view, any aesthetic improvement to the common property is incidental to the necessary repairs. Respectfully, I think the Dissenting Owners have focussed on isolated comments by the consultants and lost sight of the substance of their recommendations. This is a project to address long-standing issues with the garage, not updating the south side façade of the building. Moreover, the Dissenting Owners misstate the reasons for many of the improvements and overstate their contribution to the overall cost of the project.

[87] An accessible entrance is required by the City as a BC Building Code requirement. While the Dissenting Owners acknowledge this requirement, they argue that a ramp to the front door would duplicate accessibility already provided on the east and west sides of the building. There is no evidence that the side entrances are accessible. The Strata says the doors are too narrow. The garage entrance would require a person with accessibility issues to enter through the back alley and parkade, which would not be safe.

[88] The estimated cost of the accessible walkway, bench and related components is \$49,500 plus GST.

[89] The new fencing between patios on the south side of the building is proposed to replace planter boxes that will be moved away from the building. The units on the north side already have fences. It is only the south side units that will have new fences installed. The new fences will make the south side consistent with the north side and more clearly demarcate the patio areas. The new gates will provide direct access to the south side patios. This will provide a clear path for trades to access the patios. Currently, trades must navigate around the planter boxes.

[90] The estimated cost of the fencing around the ground level patios, five divider/trade access gates and two trade access gates is \$6,175 plus GST.

[91] The Strata will also replace the hardscaping on the east side entranceway/stairs with fencing, including fencing around the common property of one of the strata lots. The cost of this work is \$962.50 plus GST.

[92] The total estimated cost of these items is 1.75% of the proposed special levy. These are minor expenses in a large project with a total cost of \$3.4 million. One must not lose sight of the forest for the trees. More importantly, the Court cannot become involved in reviewing plans and supervising construction to ensure that every element of a project is strictly necessary to ensure safety or prevent loss or damage.

[93] I find that the Strata has demonstrated on a balance of probabilities that the Proposed Work is necessary to ensure safety or prevent significant loss or damage, physical or otherwise. I turn therefore to the residual discretion to approve the special levy resolution.

**C. Should the Special Levy Resolution be Approved?**

[94] The Dissenting Owners raise three concerns which they argue militate against an order approving the special levy resolution: conflict of interests among Council members who own ground floor units; withholding more economical options; and financial hardship on the owners.

**1. Conflict of Interests**

[95] I do not agree that Council members who own ground floor units were in a conflict of interests that could invalidate the special levy resolution.

[96] The patios are and will remain common property. Currently, the boundaries between the patios are demarcated by planter boxes. This already creates the appearance of an exclusive use space for the benefit of the ground floor units. The fencing will not change how these areas are used. The fencing will not convert them into limited common property. Replacing the planter boxes with fencing will result in more usable patio space; however, the patios are not being enlarged.

[97] One exception is the patio associated with unit 109. The boundaries of this patio will be changed from its current diagonal shape to a squared off shape, resulting in an increase of approximately 6 to 8 square feet. This is being done to accommodate the installation of the accessible walkway. The patio will also acquire more privacy and direct access from the street.

[98] The Dissenting Owners assert that the patio in question is associated with a unit owned by a Council member. This appears to be a mistake. The Council member in question owns unit 107, not unit 109. The Council member deposes that to the best of his knowledge, the owner of unit 109 has never been on Council. In

any event, the improvements to the patio associated with unit 109 do not give rise to a conflict of interests.

[99] Fundamentally, Council was asked to decide between options to restore the parking garage. Any improvements to the ground floor patios were minor components of the project, and incidental to the necessary repairs. None of the options under consideration by Council turned on changes to the ground floor patios. It is simply inconceivable that any Council member supported a \$3.4 million special levy because they would receive more usable patio space or more privacy on their patio.

## **2. Withholding More Economical Options**

[100] Likewise, there is no merit in the argument that the special levy resolution should be rejected because Council withheld material information from the owners.

[101] Council established a committee, open to all owners, to consider solutions and make recommendations to Council concerning repairs to the garage (the “Parkade Committee”). The Parkade Committee met and discussed the 2022 WSP Report, the Horizon Review and other consultant reports and design plans.

[102] Council posted the 2022 WSP Report, the Horizon Review, the WSP summary in 2024, a Parkade Committee summary, minutes of the Council meetings, and other relevant documents on Townsq, a website where information can be shared and owners can communicate.

[103] In August of 2023, Council held a Zoom session to update the owners on the Proposed Work and give the owners an opportunity to ask questions.

[104] In May of 2024, Council distributed a survey to the owners about financing options to fund the repairs.

[105] On May 28, 2024, a representative of WSP gave a presentation and answered owners’ questions about the proposed repairs, including the key findings, scope of the work, budget and next steps.

[106] On July 23, 2024, a member of the Parkade Committee spoke on behalf of himself and eight other owners at a Council meeting, explaining why in their view the Strata should proceed with the Proposed Work.

[107] At the townhall meeting on August 22, 2024, the owners engaged in vigorous and free debate for or against the project.

[108] In my view, Council provided transparency to the issues facing the Strata, and a fair process through which the special levy resolution was proposed and passed by a majority of the votes cast on September 26, 2024.

### **3. Financial Hardship on the Owners**

[109] The Dissenting Owners argue that the special levy will impose an excessive financial burden. Some owners may be forced to sell their homes, they say, likely below fair market value.

[110] The average per unit share of the special levy is approximately \$87,000, with individual amounts ranging from \$65,042 to \$103,802.

[111] This project is one of several costly undertakings currently being contemplated by the Strata, including major electrical upgrades, carpet replacement, generator replacement, boiler replacement, lobby renovations, and painting.

[112] In *VIS114*, Justice Fitzpatrick confirmed at para. 111 that a judge may consider the financial ability of the owners to pay a special levy in deciding whether to exercise the court's discretion to approve the resolution.

[113] Justice Fitzpatrick cited *Oldaker v. The Owners, Strata Plan VR 1008*, 2007 BCSC 669, and *Weir v. Owners, Strata Plan NW 17*, 2010 BCSC 784, where the Courts emphasized that a strata council must act in the best interests of all owners, implement repairs within a budget the ownership as a whole can afford, and balance competing needs and priorities to achieve "the greatest good for the greatest number."

[114] The Dissenting Owners argue that, if approved, the special levy in this case will be financially devastating for some owners, while others will enjoy expanded ground-floor patio space, increased privacy, and direct access.

[115] I do not agree that the ground floor owners will receive an unfair benefit relative to their contribution to the special levy. All owners will receive the full benefits of significant restoration work to the parking garage. The ground floor owners will bear the brunt of the disruption during the construction. Any financial benefit from the improvements to their patios will be negligible in my view.

[116] That said, I accept the evidence of the Dissenting Owners that the special levy will be significant and difficult for some of them. Different owners have different financial resources. Some may have the savings to pay the special levy in four installments, some may have to borrow, some may be forced to liquidate capital assets and some may need to do a combination of these things. If an owner cannot raise the money, they may be forced to sell their unit, which is very unfortunate. However, as noted by Fitzpatrick J. at para. 116 of *VIS114*, financial burden is but one factor in the overall consideration. The matter must be looked at globally and no one owner's personal situation can dictate the result.

[117] Part of the global context in this case is that expensive repairs are inevitable and required. Continually deferring necessary repairs is not an option. Eliminating betterments and modernizing touches will not change this reality. The owners of the Beach House are facing significant expenses and difficult decisions regardless of whether this particular special levy resolution is approved.

[118] As discussed, the engineering evidence is that deferring a full membrane replacement beyond 2027 would “risk damage to the structural integrity of the building”. Likewise, the engineering evidence is that that the asphalt-on-grade needs to be replaced, and the drainage needs to be improved.

[119] The Court does not have the authority to modify the resolution. In practical terms, an order dismissing the application to approve the current resolution would

simply result in another resolution and another application in the very near future to approve a special levy to fund a garage project, likely at an even higher cost and at the risk of further delay.

[120] I agree with the Dissenting Owners that it would be easier if they could plan for these expenses over time. However, I also agree with the Strata that a phased approach to the necessary repairs would only amount to "kicking the can down the road," resulting in further conflict and expense for all the owners, as well as a continuing breach of the Strata's obligations to repair and maintain common property: *Davis v. The Owners, Strata Plan NW 3411*, 2020 BCSC 1434 at paras. 24–29.

[121] In *VIS114*, Fitzpatrick J. said this:

[115] It is a truism to say that any homeowner would care to avoid expensive repairs to the structure of his or her house, townhome or condominium. But the sad fact of life is that home ownership comes with a price, if that homeowner wishes the home to stay in the same relative state as when they purchased it. A homeowner who ignores necessary repairs usually does so at her peril and she will usually suffer the consequences at a later time.

[122] The Beach House is no exception, as its history makes clear. I acknowledge the financial hardship it will cause for some owners; however, I cannot, in fairness to all the owners, deny the application to approve the special levy resolution.

#### **D. Costs**

[123] The Dissenting Owners ask to be relieved of the normal rule that costs of a proceeding are awarded to the successful party.

[124] In my view, the Dissenting Owners raised good-faith objections supported by reasonable concerns about the scale and cost of the project. Access to justice is an important consideration for self-represented homeowners facing such a large special levy.

[125] On the other hand, the special levy was supported by a strong majority of owners. Sixty-five percent voted in favour of the resolution. In my view, the majority

should not be asked to bear the full cost of litigation forced on them by a minority of owners. Also, in my view, the allegations by the Dissenting Owners that Council members breached their obligations to act in the interests of all owners were without merit.

[126] Accordingly, I decline to deny the Strata costs of the petition.

[127] The Dissenting Owners also object to the use of Strata money to fund the litigation. That issue is not properly before me.

#### **IV. CONCLUSION**

[128] The resolution of the Strata on September 26, 2024, to raise \$3,400,000 from the owners by way of a special levy payable in four installments is approved, with the proviso that the cost of the proposed EV conduits (\$53,912.24) be removed from the special levy imposed.

[129] The Strata is entitled to costs of the petition to be paid by the Dissenting Owners following agreement on a bill of costs or assessment by the registrar.

“Elwood J.”