

**NOTICE OF CALL: NOVEMBER 25, 2011
TAKE NOTICE THAT THE SPECIAL GENERAL MEETING
OF STRATA PLAN LMS 4456
LOCATED AT 938 NELSON STREET, VANCOUVER, BC
WILL BE HELD:**

DATE: Saturday December 17, 2011

TIME: 10:00 a.m. (Registration starts at 9:30 a.m.)

PLACE: Junior Ballroom AB (located on the 3rd floor concourse)
938 Nelson Street, Vancouver, BC

An agenda for the meeting is enclosed herewith. Please read this material prior to the meeting and bring it with you to the meeting for reference.

In order to vote, an owner must have paid in full all maintenance fees, fines or other charges owing to the Strata Corporation. Cheques will not be accepted at the meeting unless certified. If you are uncertain of the status of your strata account please call (604) 431-1800 between 8:30 a.m. and 4:30 p.m.

AGENDA

1. Registration
2. Call to Order
3. Quorum Report
4. Proof of Notice
5. Minutes of SGM on November 19, 2011
6. Council Presidents Report
7. $\frac{3}{4}$ Vote Resolution #1: Window Glazing Replacement
8. Adjournment

Council encourages all owners to attend. Thank you.

Proxies can be dropped off with the concierge or sent to the offices of Ascent.

PROXY APPOINTMENT
(Section 56)

Re: Strata Lot _____ of Strata Plan _____ LMS
4456 _____

I/We, _____, the owner(s)/tenant(s)/mortgagee of the
strata lot described above, appoint _____ to act as my/our proxy at the
annual or special general meeting to be held on December 17, 2011.

Signature of Owner/Tenant/Mortgagee
Owner/Tenant/Mortgagee

Signature of _____

FOR PROXY USE ONLY: PLEASE INDICATE YOUR VOTE

¾ Vote Resolution #1: Window Glazing Replacement

In Favour ☐ Opposed ☐ Abstention ☐

President's Report

For an SGM on December 17, 2011

For a Vote to Approve Funding of the
Window Glazing Replacement Program

At One Wall Centre

I write to report on our November 19 Special General Meeting ("SGM") and to urge you all to vote at our next SGM on December 17 in favour of funding our Window Glazing Replacement Program (the "Program").

NOVEMBER 19 SGM

I. The Briefing

The SGM that took place on November 19 accomplished a number of things related to our Program. First, the owners received a briefing on the current status of the Program and on our law suit to recover the cost of the Program.

1. Review of the glazing failure

Ed Thiessen, an engineer with RDH Building Engineering in charge of our Program, reviewed in depth with the owners the reasons why we must replace our glazing. He showed a number of slides which can be seen on our website (www.onewallcentre.ca) under Reports. He provided a short summary of the results of the multi-year studies of the defective seals on our windows, the increased fogging and the heat build-up especially in the south facing suites.

2. Response to the Request for Proposals

Kevin Ganzert, the construction manager of our Program who is also with RDH, reported on the results of the Request for Proposals which closed on November 10. The Request for Proposals specified a very tight time schedule that would support completing the Program in 2012. Five trade contractors were asked to provide the prices for the staging which will be used as a platform by the workers installing the new glazing. Four trade contractors were asked to provide prices for the reglazing. Viracon was the company who supplied the glass for the hotel. The proposal to reglaze with Viracon glass was \$1.9 million more than reglazing with other available glass. (All my numbers include HST.) The cost of the proposal to add 68 more opening windows or vents was \$164,000. As I explain later in my report, the motion for these additional vents was defeated. The total budget which is being presented to the owners at the SGM is \$7.2 million (\$7,163,564 rounded up to cover unexpected expenses associated with the Program). This budget includes all costs including extended warranties and reasonable contingencies.

RDH will negotiate further with the trade contractors once we have passed our budget for the Program.

This budget is very well thought out and reviewed by all parties. The budget presented in 2010 was much more of a rough estimate. On a true "apples-to-apples basis", the 2010 budget would have needed to be \$1.45 million higher.

3. Passing the budget is urgent

Kevin also advised the owners to pass the budget for the Program as soon as possible so he can effectively negotiate with the trade contractors and enter into trade contracts in order to support the very tight time schedule to complete the work in 2012. He said that there is a big advantage for him on to negotiate our behalf for a project with an approved budget rather than a project with no funding.

Kevin was asked if we should wait for another year to get a possible reduction in the HST. Kevin advised against waiting another year, because:

- a) We would lose a lot of momentum if the project stalls at this time. In addition, we can bring a project like this to the market only a limited number of times before contractors become sceptical, lose interest, and don't pursue it aggressively.
- b) We don't know what the net outcome of the change back from HST will do to construction costs. Theoretically the tax rate would decrease to the GST rate, but the contractors will need to add PST back into the contract amounts. The PST is often a buried tax that isn't openly disclosed.
- c) The construction market is soft at this time and prices have dropped considerably over the past 18 months. We don't know when prices will climb but at some point in time construction budgets will get caught in price upswings as the market returns to normal.

4. Legal advice

a. Status of the law suit

Our legal counsel, Tim Peters, briefed the owners on the status of the litigation. Tim continues to believe we have a strong case. The discovery of relevant documents is now complete. The documents disclosed by Wall Financial revealed some very helpful evidence for our case. The oral discovery of Bruno Wall is planned for early 2012, and the mediation of our claim is still planned for late winter of 2012. If the mediation does not result in a settlement agreement, then the trial is set for September 2012. Any serious offers of settlement will be brought before the owners for a vote. If you sell your suite in the meantime, be sure to consider a possible settlement or judgement amount to which you may be entitled.

b. Start the repairs to enhance our legal and negotiating position

Tim encouraged us to move forward with our Program next year to satisfy our duties under the Strata Property Act [Section 72] [and our own bylaw 3.4] to repair and maintain our common property. If we do not move forward next year, Tim also said that our claim would be compromised, because the defendants and the courts will be sceptical that we may ever complete the Program and incur the damages for which we seek reimbursement. Tim also said the mediation and the trial would probably not proceed if we have not at least started the work next year.

c. We must fix our building

Tim was asked what happens if our vote fails again as happened in the January 2010 AGM. Tim said that the strata corporation must repair the building even in the face of another failed vote and must take further steps to satisfy this duty [Section 72, Strata Property Act]. The available steps include:

1. Add the Program budget to the annual budget and pass it with a simple majority; or

2. Any owner can commence an action to seek an order of the court that the strata corporation repair the building and assess the owners the cost to do the repairs [Section 163]. And, the strata corporation may join in the law suit those owners who voted against the Program budget and ask that the costs of the action be assessed against them [Section 168]; or
3. The strata corporation or any owner may seek a court order to appoint an administrator to exercise the powers and perform the duties of the strata corporation [Section 174], again with the added costs awarded against those who voted against the Program.

[All of these alternative steps would accomplish nothing except add to the overall cost that we owners are currently facing to fix our building and turn neighbours against each other.]

d. Return of unused portions of the special levy

Tim was asked what happens to the unused portions of the special levy. Section 108 of the Strata Property Act requires council to return to the owners any unused portion of the special levy when the balance exceeds \$100 per suite. So, if we negotiate lower prices or we do not use or need the contingencies, then the money will be returned to the owner on title at that time. So, if you sell your suite in the meantime, be sure to consider the possible return of a portion of the levy in your sale negotiations.

II. Pre-construction work funding approved

After the briefing, the owners voted to approve funding of more pre-construction work including the modifications which may be needed to the elevators, mock up panels of the glass we propose to use, and the engineering and administration associated with this work.

III. More opening windows defeated

Next, the owners failed by one vote to approve additional operable windows as part of the Program. While most of the voting owners would have preferred more operable windows, the deletion of them from the Program results in the work being simpler with fewer approvals and less cost.

IV. Floor 31 to be included in the Program

Finally, the owners considered the unique nature of floor 31.

The arguments against including the 31st floor were that it was unique:

1. the glazing was dark tinted like the hotel and not like the resident floors;
2. the failure rate was slower like the hotel;
3. the reglazing could be done whenever the hotel does its reglazing;
4. the cost would be higher due to the Viracon glass on the north and south elevations and clear in the notch; and
5. the reglazing would require some special one-off glass panels.

The arguments in favour of including floor 31 in the Program at this time included the facts that:

1. floor 31's windows are as faulty as the rest of the strata corporation's floors;
2. the strata corporation's duty to maintain and repair the common property applies equally to floor 31 as it does to the other floors;

3. the hotel has no plans to reglaze, and it may be a very long time before hotel does so, during which the owners on 31 will have to suffer with the faulty windows;
4. the cost to do the replacement of floor 31's windows will be cheaper now with the stage platform, the glass and the workers in place and will be more expensive if done in the future when we would have to pay again to reassemble all these resources;
5. like the other floors, the market value of the suites on floor 31 will not be regained until their windows are replaced;
6. if permitted by the City, we could use the same kind of glass as the rest of the resident floors.

After a thorough discussion, the owners directed the council to include floor 31 in the Program, but to use the same glass as the rest of the resident floors if the City approves. However if the City will not approve the same glass as used in the floors above, Viracon glass will have to be used on the 31st floor.

V. We will not use Viracon glass on floors 32 through 48

The owners also directed council not to use the more expensive Viracon glass, except if required by the City for floor 31.

As you can see from this report, the SGM resolved a number of issues for council. We are now ready to prepare a budget for the owners and move forward with our Program in time for the work to be done next year.

DECEMBER 17 SGM

The SGM scheduled for December 17, 2011, will ask the owners to vote to approve funding of the Program. The resolution we will put to the vote will reflect the directions we have received from the owners and the best judgement of the council.

VI. Practical Reasons

In addition to the legal requirement to vote to fund our Program, there are many practical reasons for us.

1. We must fix our building

As our lawyer, Tim Peters, has advised us, we must repair our building. Delay in funding due to a failed vote will only result in us having to use one of the less desirable alternatives that are set out above, all of which will increase our overall costs and which will create resentment among owners.

2. \$450,000 already invested

We have already spent or committed to spend about \$450,000 to the Program and the legal suit to recover our costs.

3. Property values

Our property values have suffered and will continue to suffer until our building is fixed and no longer has the stigma of being flawed. Our suite is 4502 and its value has slid from about \$1.5 million to about \$1.2 million due to the fact that we have unrepaired window problems.

Judith Matheson, a realtor with a lot of experience selling suites in our building, says it is commonly known in the real estate market that our windows are failing and, as a result, at least some lenders will

not lend to buyers until the windows are addressed. So, a buyer must not only deal with unrepaired windows, but also must have lots of cash, because he or she may not be able to borrow using the suite as security for a loan. Once we vote to fund the Program and move forward with repairs, Judith says certainty will start returning to the resale market of our suites. And, once the work is commenced, lenders should be confident in lending again. (Which is another reason why the 31st floor should be repaired at the same time, as one unrepaired floor will still leave a cloud—even though it would be a smaller one—hanging over the building. A total repair would likely result in this matter, after a period of time, being forgotten.) After word of our repair is commonly known, the market for our suites should improve to where it should be.

If our suites return to their proper value soon after we fix our building, then this may be the best investment we will make in 2012: we could triple our investment in the repairs.

4. Council has obtained competitive proposals

At the January 2010 AGM, the general consensus of those who opposed funding the repairs was that they wanted to see the results of competitive bidding for the work. We now have competitive bids as a result of invitations to five trade contractors for the staging and four trade contractors for the reglazing. The current pricing is about \$1.45 million less than the price we presented two years ago. RDH said we are getting the benefit of lower prices from the trade contractors because the construction market is soft right now. Our timing seems right to get the work done now. In addition, once we vote to fund the Program and it is definitely moving forward in the spring, RDH will ask the trade contractors to “sharpen their pencils” which hopefully will result in even lower prices.

5. Our law suit will strengthen

As Tim has advised us, if we fail to fund our Program, then our law suit and mediation go into limbo. Delay will stall our efforts to negotiate a settlement of our claim and to receive settlement monies. Our claim will suffer credibility in the eyes of the defendants and the courts until we have voted to fix the building and at least started the work.

6. We can all move forward again

Finally, until our building is fixed, our property values will not recover. Until our property values recover, we cannot sell our suites without a big discount. Until we can sell our suites at a proper value, many of us cannot move on with our lives. To some, this means they cannot move to a house with a yard for a new child. To others, it means they cannot move to a bigger or smaller apartment due to their changed needs. To others still, it means they cannot use the money tied up in their suite for a better investment. We may not be able to even mortgage our suites to raise money, because borrowing funds is very difficult while the building is in need of repairs. All of us are waiting for the building to be fixed, so that we can move on.

VII. More Information

My report is a brief summary of the mountains of information that has been collected over the last several years on this issue. Council has posted on our website under the headings of Reports and Minutes lots of information on the analysis of the problem and the advice we have received from our experts. If you have any questions about the Program, you can always speak to a council member. Just ask the concierge to ask one of us to call you, and we will be happy to chat with you.

PLEASE VOTE IN FAVOUR OF FUNDING THE PROGRAM

As you can see from this report, in the last six months we have made substantial progress towards our goal of completing the window glazing replacement program after years of frustratingly slow progress. We are finally ready to move to the construction stage of the Program. If all goes according to the RDH schedule, we will be finished with the Program by this time next year. And, if all goes well in our law suit, by this time next year we will be enjoying the return of at least part of the monies we have spent and are about to spend to fix our building.

For all the reasons set out above, it is essential that we vote to fund the Program on December 17, so we can proceed with the repairs in 2012. The sooner we get going on the repairs, the better for all of us. The path we must take is clear. The cost is high, but the cost of not doing the repairs is much higher. On behalf of the entire Strata Council, I ask you to please attend the December 17 SGM in person or by proxy and vote to fund the Program.

Thank you.

Yours Sincerely,

D. Bruce Gleig, President

SPECIAL RESOLUTION (3/4 VOTE) #1
SPECIAL LEVY – Window Glazing Replacement

WHEREAS on or about January 14, 2006, the Strata Corporation retained the services of RDH Building Engineering Ltd. ("RDH") to investigate the premature fogging of the Insulating Glass Units ("IGUs") comprising One Wall and to investigate reports of overheating within the strata units. RDH reported its findings and final recommendations at the SGM on November 19, 2011.

WHEREAS the Owners Strata Plan LMS 4456 wish to complete the Window Glazing Replacement as recommended by "RDH" and the costs for the "Window Glazing Replacement" are listed below;

BE IT RESOLVED by $\frac{3}{4}$ vote resolution of the owners to LMS 4456 to authorize an expenditure of \$7,200,000.00 by raising the necessary funds through special levy to complete the Window Glazing Replacement as listed below;

Construction Costs	
General Condition Costs	\$255,725
Rehabilitation Costs	\$5,378,721
Construction Contingency	\$300,000
Total Construction Costs	\$5,934,446
Admin Fee Ascent Real Estate Mgmt.	\$40,000 (includes HST)
Building Permit Fee (1.00% of construction costs)	Costs waived by City of Vancouver
RDH Engineering Design, Admin, and Field Review	\$250,000
HST on Construction and Engineering	\$742,134
10 Year Warranty	\$196,984
Administrative Contingency	\$36,436
Project Costs Requiring Funding	\$7,200,000

In the event that the actual cost of the proposed project is less than the special levy amount, the remaining funds shall be returned to the owners in amounts proportional to their contributions. However, if none of the owners would receive more than \$100, the strata corporation LMS 4456 may deposit the excess in the CRF rather than returning the surplus funds to the respective owners.

Interest earned on funds raised pursuant to this resolution will be allocated to the special levy fund.

This special levy of \$7,200,000.00 shall be assessed on December 17, 2011, and shall become due and payable in full immediately on the passing of this resolution by the owners on title as at the end of that day and any owner who sells, conveys or transfers his/her title, or

remortgages, before payment of this special levy is made in full, shall then pay the full amount outstanding.

As a matter of financial convenience only, the special assessment is to be paid in 2 equal instalments on February 1, 2012 and May 1, 2012.

Notwithstanding the foregoing, this special levy is not considered an "instalment" levy as contemplated by Section 108(3) (e) of the *Strata Property Act*, and Section 109 of the *Strata Property Act* therefore does not apply.

Any owner who fails to make any payment(s) in accordance with this resolution shall be assessed interest charges on overdue payments at the rate of 10% per annum compounded annually.

Sections 116, 117 and 118 of the *Strata Property Act* (see attached) shall be applicable where an owner fails to make the required payment as authorized by the passing of this $\frac{3}{4}$ vote.

**STRATA PLAN LMS 4456
ONE WALL CENTRE
WINDOW GLAZING REPLACEMENT LEVY
DUE DECEMBER 17, 2011**

(For convenience purposes only, the owners may pay this special levy in 2 equal installments on February 1, 2012 and May 2, 2012)

TOTAL LEVY AMOUNT **\$7,200,000.00**

S.L.#	UNIT #	U/E	TOTAL WINDOW GLAZING LEVY	FEB 1, 2012 INSTALLMENT	MAY 1, 2012 INSTALLMENT
1	3106	757	56,604.01	28,302.01	28,302.00
2	3101	1021	76,344.38	38,172.19	38,172.19
3	3102	758	56,678.78	28,339.39	28,339.39
4	3103	738	55,183.30	27,591.65	27,591.65
5	3104	1096	81,952.44	40,976.22	40,976.22
6	3105	740	55,332.85	27,666.43	27,666.42
7	3206	738	55,183.30	27,591.65	27,591.65
8	3201	989	73,951.60	36,975.80	36,975.80
9	3202	756	56,529.23	28,264.62	28,264.61
10	3203	738	55,183.30	27,591.65	27,591.65
11	3204	1099	82,176.76	41,088.38	41,088.38
12	3205	732	54,734.66	27,367.33	27,367.33
13	3306	760	56,828.33	28,414.17	28,414.16
14	3301	990	74,026.38	37,013.19	37,013.19
15	3302	761	56,903.11	28,451.56	28,451.55
16	3303	736	55,033.75	27,516.88	27,516.87
17	3304	1100	82,251.53	41,125.77	41,125.76
18	3305	733	54,809.43	27,404.72	27,404.71
19	3404	1520	113,656.66	56,828.33	56,828.33
20	3401	1380	103,188.29	51,594.15	51,594.14
21	3402	1519	113,581.89	56,790.95	56,790.94
22	3403	1447	108,198.15	54,099.08	54,099.07
23	3504	1385	103,562.16	51,781.08	51,781.08
24	3501	1403	104,908.09	52,454.05	52,454.04
25	3502	1442	107,824.28	53,912.14	53,912.14
26	3503	1491	111,488.21	55,744.11	55,744.10
27	3604	1368	102,291.00	51,145.50	51,145.50
28	3601	1406	105,132.41	52,566.21	52,566.20
29	3602	1446	108,123.38	54,061.69	54,061.69
30	3603	1465	109,544.09	54,772.05	54,772.04
31	3704	1388	103,786.48	51,893.24	51,893.24
32	3701	1406	105,132.41	52,566.21	52,566.20
33	3702	1441	107,749.51	53,874.76	53,874.75
34	3703	1490	111,413.44	55,706.72	55,706.72
35	3804	1520	113,656.66	56,828.33	56,828.33
36	3801	1381	103,263.06	51,631.53	51,631.53
37	3802	1519	113,581.89	56,790.95	56,790.94
38	3803	1445	108,048.60	54,024.30	54,024.30
39	3904	1520	113,656.66	56,828.33	56,828.33
40	3901	1379	103,113.51	51,556.76	51,556.75
41	3902	1525	114,030.53	57,015.27	57,015.26
42	3903	1446	108,123.38	54,061.69	54,061.69

**STRATA PLAN LMS 4456
ONE WALL CENTRE
WINDOW GLAZING REPLACEMENT LEVY
DUE DECEMBER 17, 2011**

(For convenience purposes only, the owners may pay this special levy in 2 equal installments on February 1, 2012 and May 2, 2012)

TOTAL LEVY AMOUNT \$7,200,000.00

S.L.#	UNIT #	U/E	TOTAL WINDOW GLAZING LEVY	FEB 1, 2012 INSTALLMENT	MAY 1, 2012 INSTALLMENT
43	4004	1385	103,562.16	51,781.08	51,781.08
44	4001	1402	104,833.32	52,416.66	52,416.66
45	4002	1435	107,300.86	53,650.43	53,650.43
46	4003	1492	111,562.99	55,781.50	55,781.49
47	4104	1387	103,711.70	51,855.85	51,855.85
48	4101	1407	105,207.19	52,603.60	52,603.59
49	4102	1439	107,599.96	53,799.98	53,799.98
50	4103	1491	111,488.21	55,744.11	55,744.10
51	4204	1531	114,479.18	57,239.59	57,239.59
52	4201	1383	103,412.61	51,706.31	51,706.30
53	4202	1519	113,581.89	56,790.95	56,790.94
54	4203	1447	108,198.15	54,099.08	54,099.07
55	4304	1520	113,656.66	56,828.33	56,828.33
56	4301	1380	103,188.29	51,594.15	51,594.14
57	4302	1519	113,581.89	56,790.95	56,790.94
58	4303	1446	108,123.38	54,061.69	54,061.69
59	4504	1519	113,581.89	56,790.95	56,790.94
60	4501	1381	103,263.06	51,631.53	51,631.53
61	4502	1519	113,581.89	56,790.95	56,790.94
62	4503	1447	108,198.15	54,099.08	54,099.07
63	4604	1387	103,711.70	51,855.85	51,855.85
64	4601	1405	105,057.64	52,528.82	52,528.82
65	4602	1438	107,525.18	53,762.59	53,762.59
66	4603	1490	111,413.44	55,706.72	55,706.72
67	4704	1387	103,711.70	51,855.85	51,855.85
68	4701	4641	347,026.69	173,513.35	173,513.34
69	4703	1497	111,936.86	55,968.43	55,968.43
70	4803	1444	107,973.83	53,986.92	53,986.91
71	4804	1520	113,656.66	56,828.33	56,828.33
72	4802	1058	79,111.02	39,555.51	39,555.51
TOTALS		96290	7,200,000.03	3,600,000.18	3,599,999.85

Certificate of Lien

116 (1) The strata corporation may register a lien against an owner's strata lot by registering in the land title office a Certificate of Lien in the prescribed form if the owner fails to pay the strata corporation any of the following with respect to that strata lot:

- (a) strata fees;
- (b) a special levy;
- (c) a reimbursement of the cost of work referred to in section 85;
- (d) the strata lot's share of a judgment against the strata corporation;
- (e) [Repealed 1999-21-25.]

(2) The strata corporation may register a lien against any strata lot, but only one strata lot, owned by an owner as owner developer, by registering in the land title office a Certificate of Lien in the prescribed form if the owner developer fails to pay an amount payable to the strata corporation under section 14 (4) or (5), 17 (b) or 20 (3).

(3) Subsections (1) and (2) do not apply if

- (a) the amount owing has, under section 114, been paid into court or to the strata corporation in trust,
- (b) arrangements satisfactory to the strata corporation have been made to pay the money owing, or
- (c) the amount owing is in respect of a fine or the costs of remedying a contravention.

(4) On registration the certificate creates a lien against the owner's strata lot in favour of the strata corporation for the amount owing.

(5) The strata corporation's lien ranks in priority to every other lien or registered charge except

- (a) to the extent that the strata corporation's lien is for a strata lot's share of a judgment against the strata corporation,
- (b) if the other lien or charge is in favour of the Crown and is not a mortgage of land, or
- (c) if the other lien or charge is made under the *Builders Lien Act*.

(6) On receiving the amount owing, the strata corporation must within one week remove the lien by registering in the land title office an Acknowledgment of Payment in the prescribed form.

Forced sale of owner's strata lot to collect money owing

117 (1) After the strata corporation has registered a Certificate of Lien against a strata lot, the strata corporation may apply to the Supreme Court for an order for the sale of the strata lot.

(2) If the strata corporation has obtained a judgment for the amount owing, the court may, after considering all the circumstances, make an order for the sale of the strata lot.

(3) If the strata corporation has not obtained a judgment for the amount owing, the court may try the issue and may

(a) order that judgment be entered against the owner in favour of the strata corporation for the amount of the lien or for an amount that the court, as a result of the trial, finds owing, and

(b) if judgment is entered against the owner, make an order for the sale of the strata lot after considering all the circumstances.

(4) An order for the sale of a strata lot must provide that, if the amount owing is not paid within the time period required by the order, the strata corporation may sell the strata lot at a price and on terms to be approved by the court.

Costs added to amount owing

118 The following costs of registering a lien against an owner's strata lot under section 116 or enforcing a lien under section 117 may be added to the amount owing to the strata corporation under a Certificate of Lien:

(a) reasonable legal costs;

(b) land title and court registry fees;

(c) other reasonable disbursements.