

## **CONDOMINIUM AUTHORITY TRIBUNAL**

**DATE:** November 23, 2023

**CASE:** 2022-00621R

**Citation:** Koivisto v. Brant Vacant Land Condominium Corporation No. 84, 2023 ONCAT 177

Order under section 1.44 of the *Condominium Act, 1998*.

**Member:** Dawn Wickett, Member

**The Applicant,**

Rosey Koivisto

Self-Represented

**The Respondent,**

Brant Vacant Land Condominium Corporation No. 84

Represented by Filipe Mendes, Counsel

**Hearing:** Written Online Hearing – January 19, 2023 to November 16, 2023

### **REASONS FOR DECISION**

#### **A. PRODEDURAL INFROMATION**

- [1] The Respondent participated in the Tribunal proceedings as self-represented. On May 12, 2023, counsel for the Respondent joined the case to represent the Respondent for the remainder of the Stage 3 hearing.
- [2] The hearing occurred March 7, 2023, to July 21, 2023. The Member initially assigned to hear the matter completed the hearing, however due to unforeseen circumstance, the Member was not able to issue a decision. Subsequently, on November 13, 2023, I was assigned as the new Member to issue a decision. The parties were advised that I was assigned as the new Member for the purpose of making a decision and issuing an order. Neither party expressed objections to my taking over this matter. This was a written hearing which means I was able to fulsomely review the messages, evidence and submissions of both parties in the same capacity had I been the original Member assigned.

#### **B. INTRODUCTION**

- [3] The Applicant is a unit owner in Brant Vacant Land Condominium Corporation No. 84 (“BVLCC 84”). The Applicant filed this application with the Tribunal alleging BVLCC 84 did not respond within thirty days to her July 15, 2022, request for records. The Applicant further alleges that BVLCC 84’s records are inadequate pursuant to subsection 55 (1) of the *Condominium Act, 1998* (the “Act”).
- [4] The Applicant seeks to obtain copies of BVLCC 84’s board meeting minutes for the twelve months prior to her request (September 2021 to July 2022) and all approved and declined requests for exterior changes for September 2021 to July 2022.
- [5] On August 15, 2022, the Applicant sent a letter to BVLCC 84 advising that it had not responded to her request for records. In the letter, the Applicant requested that BVLCC 84 address the issue no later than August 22, 2022.
- [6] On August 22, 2022, BVLCC 84 responded by email to the Applicant’s request for records. It did not respond using the mandatory board response form. In its email, BVLCC 84 attached a copy of the board meeting minutes and noted that all the alteration requests (requests for exterior changes) were included within the meeting minutes. BVLCC 84 did not include the September 23, 2021, meeting minutes and provided no explanation as to why they were not included.
- [7] On August 29, 2022, the Applicant sent a letter to BVLCC 84 advising that its response was inadequate because it did not use the mandatory board response form and it did not provide her with a copy of the actual meeting minutes or exterior change requests. The Applicant advised BVLCC 84 that she would be filing an application with the Tribunal for resolution.
- [8] During the Tribunal’s Stage 2-Mediation, the parties agreed to the following and that these issues would not be discussed in the Stage 3-Tribunal Decision:
- a) The September 23, 2021, meeting minutes were missed but subsequently provided to the Applicant.
  - b) The Respondent did not respond to the Applicant’s request for records form within the required 30 days.
  - c) The Respondent did not respond to the Applicant’s request for records using the board response form.
- [9] The issues to be determined in Stage 3-Tribunal Decision are:

- a) Has the Respondent provided the Applicant with all the records that she is entitled to receive pursuant to her July 15, 2022, request for records?
- b) Are the records the Applicant received from the Respondent adequate within the meaning of subsection 55 (1) of the Act?
- c) Is a penalty or cost award appropriate?

[10] BVLCC 84 submits that it did not respond within thirty days to the Applicant's request for records because it was awaiting guidance from its counsel who was away on vacation. It further submits that it has provided the Applicant with all the records to which she is entitled. Some were provided prior to the Tribunal application; some were provided during Stage-2 Mediation and the remainder (requests for exterior changes) were provided during this hearing.

[11] BVLCC 84 rejects the Applicant's assertion that its meeting minutes are inadequate within the meaning of subsection 55 (1) of the Act. BVLCC 84 submits that its meeting minutes are consistent with the Condominium Authority of Ontario's ("CAO") website which sets out information to be included in board meeting minutes. BVLCC 84 further submits that adequate does not mean "complete" or "contemporaneous", and the standard is not "perfection". BVLCC 84 relied on various Tribunal decisions where it has been held that board meeting minutes must not be held to the standard of perfection but must contain "sufficient detail to know what is going on, how and when decisions were made, and the basis for those decisions".

[12] As remedies, the Applicant seeks orders requiring BVLCC 84 to comply with its duties under subsection 55 (1) of the Act by keeping adequate meeting minutes, that it reimburses her the cost of filing this application and that a penalty be imposed against BVLCC 84. The Applicant did not specify the amount of the penalty she is seeking.

[13] The Applicant further requested an order requiring BVLCC 84 to provide her with the records set out in her July 15, 2022, request for records. However, this remedy is moot given the records have all been provided to the Applicant during the Tribunal's proceedings.

[14] BVLCC 84 submits that despite the Tribunal's Rules 48.1 of its Rules of Practice whereby the unsuccessful party will be required to pay the successful party's CAT fee, the Tribunal should decide otherwise and not order it to pay the Applicant her cost for filing this application. BVLCC 84 provided no reasonable explanation for its

position on this issue.

[15] BVLCC 84 further submitted that while there was a delay in providing the Applicant the records she requested, it did not refuse without reasonable excuse. As such, the Tribunal does not have the authority pursuant to section 1.44 (1) 6 of the Act to assess a penalty for a delay in providing records.

[16] For the reasons that follow, I find:

1. BVLCC 84 has provided the Applicant with all the records she is entitled to in accordance with her July 15, 2022, request for records.
2. BVLCC 84's redaction in the requests for exterior changes records of October 2021 to July 2022 are appropriate.
3. BVLCC 84 has failed to keep adequate board meeting minutes as required under subsection 55 (1) of the Act.
4. It appropriate to order BVLCC 84 to reimburse the Applicant her cost for filing this application.
5. I find no basis to order a penalty against BVLCC 84.

### **C. ISSUES AND ANALYSIS**

**Issue No. 1: Has the Respondent provided the Applicant with all the records that she is entitled to receive pursuant to her July 15, 2022, request for records?**

[17] On August 22, 2022, BVLCC 84 provided a copy of the board meeting minutes for October 2021 to August 2022. During Stage 2-Mediation, BVLCC 84 provided the Applicant with the September 2021 meeting minutes. During this hearing, BVLCC 84 provided the Applicant with redacted copies of the approved and declined requests for exterior changes for October 2021 to July 2022.

[18] The Applicant submits that she has not received all the records she is entitled to, specifically the requests for exterior changes for October 2021 to July 2022. Although the Applicant was provided with copies of these records, she takes issue with the redaction BVLCC 84 made to the records. As such, it is her position she has not received the records necessary to fulfill her July 15, 2022, request for records.

[19] The Applicant takes the position that BVLCC 84's redactions are too extensive and

prevent her from knowing how the board members made their decision to approve or deny the requests, as well any conditions the board members may have imposed on approved requests.

- [20] BVLCC 84 submits that they have provided the Applicant with all the records, and its counsel advised that it provided more information to the Applicant than what she was entitled because of the provisions of subsection 55 (4) of the Act. Subsection 55 (4) of the Act states unit owners do not have the right to examine or obtain copies of records relating to employees (except contracts of employment), actual or contemplated litigation and insurance investigations, or records relating to specific unit owners. Some of this information was not redacted properly in the board meeting minutes provided to the Applicant.
- [21] Regarding the Applicant's claim that the requests for exterior changes provided to her are too heavily redacted, BVLCC 84 submits that the redactions comply with its obligations under the Act as not to reveal any information which may otherwise identify the requesting unit owner.
- [22] BVLCC 84 further submits that as a board, this was the first request for records that it has had to address, and "we dropped the ball on some issues, and we put that in our lesson's learned bucket".
- [23] Having reviewed the evidence before me, I find BVLCC 84 has provided the Applicant with the records required to fulfill in her July 15, 2022, request for records. While the records were not provided within thirty days of the date the request was made, prior to the Tribunal hearing BVLCC 84 provided the Applicant with the board meeting minutes for October 2021 to August 2022. During the course of the Tribunal proceedings, the Applicant received the board meeting minutes for September 2021, and redacted exterior change requests for October 2021 to July 2022.
- [24] While the Applicant takes issue with BVLCC 84's redactions in the copies of the exterior change requests, I find the redactions were appropriate and in keeping with the provisions of subsection 55 (4) of the Act. Clause 55 (4) (c) of the Act stipulates that the right to examine or obtain copies of records does not apply to records relating to specific unit owners. This means that if a corporation believes that a requesting unit owner is entitled to a record which contains identifying information about another unit owner, then all identifying information must be redacted to protect the privacy of the other unit owner. I find BVLCC 84's redactions of the exterior change requests for October 2021 to July 2022 meet this legislative requirement to protect other unit owners' privacy, while allowing the

Applicant to know what requests were made, the date they were made, and whether they were approved by the Board.

- [25] Given my findings above, I am satisfied that the Applicant has received all the records required to fulfill her July 15, 2022, request for records.

**Issue No. 2: Are the records the Applicant received from the Respondent adequate within the meaning of section 55(1) of the Act?**

- [26] The Applicant submits that the copy of the meeting minutes she received are not adequate records pursuant to subsection 55 (1) of the Act. The Applicant submits that the minutes are all contained in one “live” document (excel spreadsheet) which can be and has been edited by BVLCC 84 on an ongoing basis. The document has columns which identify issues addressed during the respective board meetings, with an action/comments column that is amended retroactively each time an actioned item has been completed. As an example, the Applicant referenced an entry of August 4, 2022, which notes the meeting minutes were “cleaned up and ready to pass along to owner”. The Applicant submits that this demonstrates that the meeting minutes kept in the live document likely were edited going back to October 2021. The Applicant surmises that BVLCC 84’s method of recording meeting minutes is not a record designed to preserve details about business conducted or actions taken at a meeting.
- [27] The Applicant takes the position that meeting minutes need to be contemporaneous to have some level of accuracy, but not perfection. Meeting minutes should also be kept in a manner that they are finalized and approved.
- [28] The Applicant further submits that the details contained in the meeting minutes are inadequate and do not provide sufficient information to understand how decisions were made, why decisions were made or the how decisions were approved or not approved.
- [29] The Applicant also takes issue with BVLCC 84’s process of making decisions about unit owner’s requests for exterior changes. When the Applicant advised that the meeting minutes were incomplete because they did not contain decisions about the request for exterior changes, BVLCC 84 submitted that these decisions were not and are not made during board meetings. Rather, the directors discuss the requests by way of telephone or email and make a decision together. There are no minutes for these decisions.
- [30] BVLCC 84 submits that its meeting minutes are adequate pursuant to subsection

55 (1) of the Act. It submits that the records are not required to be contemporaneous or complete, nor do they have to be kept to the standard of perfection. BVLCC 84 submits that the meeting minutes are captured in a “living” record, being an excel spreadsheet. The meeting minutes get circulated to the board members for review and approval, and then they become part of the “formal record.”

- [31] BVLCC 84 submits that when it provided the Applicant with a copy of the board meeting minutes for October 2021 to August 2022, it did redact the actual live meeting minutes resulting in the original minutes being “overwritten” and now they no longer exist.
- [32] Since September 2022, BVLCC 84 has implemented strategies to improve the meeting minutes. In addition to using the live excel spreadsheet, it takes snapshots in time of the discussions of the board of members. These snapshots are kept in PDF files. BVLCC 84 has also implemented specific PDF files for the “active” issues that were discussed at each meeting.
- [33] BVLCC 84 submits that its meeting minutes contain adequate information to allow the unit owner to know what is going on, how and when decisions were made and the basis for those decisions.
- [34] Both parties relied on various prior decisions of the Tribunal in support of their positions. When explaining my reasons for my decision, I will only discuss the decisions I find to be relevant.
- [35] There is no dispute that as of October 2021, BVLCC 84’s meeting minutes are contained in a live document. I have reviewed the meeting minutes for the period of September 23, 2021, to August 4, 2022, and note the following:
- The meeting minutes for October 2021 to August 2022 are contained in a spreadsheet with various columns. In the “Actions/Comments” column, it is evident that the minutes were edited after the meeting dates. For example, the minutes for the October 7, 2021, discussion column states one of the board members is to call legal for update. In the actions/comments column, it states “October 21, 2021-Feedback rec’d was that our case was still on hold and no scheduled date with the courts is yet possible.”
  - The meeting minutes (October 2021 to August 2022) do not contain attendance, indication of quorum, location of meeting, time meeting started and ended, no voting information, or whether a decision made was carried by

board members and no indication if conflicts of interest were explored/identified.

- The details of issues discussed during the October 2021 to August 2022 meeting are inconsistent with the amount of detail provided.
- The September 2021 meeting minutes are one page in a PDF file. They are written in point form. The date and time were recorded, as well as the location of the meeting. Attendance was not recorded, quorum was not recorded, end time was not recorded, and conflicts of interest were not explored or documented.

[36] Both parties referred to information found on the CAO website regarding best practices for keeping condominium board minutes. Based on the information there, it does appear that BVLCC 84's minutes should be viewed as inadequate. The minutes do not record attendance, there are no records of votes or motion and they do not contain enough detail to allow a unit owner to know how and why a decision was made, and/or the impact (financial) of the decision.

[37] When making my determination about the adequacy of records, I must consider more than just the recommendations on the CAO website. I must consider section 55 (1) of the Act, and the previous decisions of courts and of this Tribunal. The issue of adequacy of records is not new and has been addressed by this Tribunal on many occasions, including specifically in relation to minutes. It is an important issue, particularly when determining the adequacy of meeting minutes because as previously held by this Tribunal, meeting minutes have a “special place and purpose in helping to ensure that ‘the affairs and dealing of the corporation and its board of directors are an open book to .... the unit owners’, and in helping owners protect their ‘unique interest in how the corporation is managed.’” (Yeung v. Metropolitan Toronto Condominium Corporation No. 1136, (2020 ONCAT 33))

[38] On the issue of adequacy of record, the court provided guidance in *McKay v. Waterloo North Condominium Corp. No. 23, 1992 CanLII 7501* (ON SC), where it stated:

The Act obliges the corporation to keep adequate records. One is impelled to ask – adequate for what? An examination of the Act provides some answers. The objects of the corporation are to manage the property and any assets of the corporation (s. 12 (1)). It has a duty to control, manage and administer the common elements and the assets of the corporation (s.12 (2)). It has a duty to effect compliance by the owners with the Act, the declaration, the by-laws and



the rules (s. 12 (3)). Each owner enjoys the correlative right to the performance of any duty of the corporation specified by the Act, the declaration, the by-laws and the rules. The records of the corporation must be adequate, therefore, to permit it to fulfil its duties and obligations.

- [39] In the Tribunal's decision *Rahman v. Peel Standard Condominium Corporation No. 779*, (2021 ONCAT 32), it was held that:

In matters before the Tribunal, we see a wide variety of minutes in terms of form and detail. Issues about the adequacy of minutes arise frequently. It is well settled law at this point that the purpose of minutes is to document a board's business transactions and to show how the corporation's affairs are controlled, managed, and administered. There is an implied requirement that the minutes be accurate, but the Act does not impose a standard of perfection. Minutes are not required to be a verbatim account of a meeting.

- [40] The above decisions clearly establish that board meeting minutes must contain sufficient detail to allow unit owners to understand how decisions are being made, when and why decisions are being made, and what, if any, are their financial implications.

- [41] While I agree with BVLCC 84 that it cannot be held to the standard of perfection, I do not agree the meeting minutes are adequate. I say this for a variety of reasons. The meeting minutes do not set out basic information such as attendance, location of the meetings, quorum, start and end times and whether conflicts were declared. Most importantly, the meeting minutes does not contain detailed information as to how decisions were made or voted on.

- [42] Currently, BVLCC 84's practice of recording of meeting minutes results in the details continuously being retroactively edited when action items have been completed. This means, if a unit owner requests a copy of meeting minutes for a specific month, they likely will need to make ongoing requests to ensure they obtain copies with the ongoing edits being made by BVLCC 84. This poses a significant problem and demonstrates that the records being provided to unit owners are inadequate as they can never be sure if they have the final or complete version for their reference. Meeting minutes are intended to be a historical record of the corporation on which unit owners can rely as being an accurate reflection of the business transacted during the meeting. It should not be a document that is "live" and forever being edited.

- [43] Generally, board meeting minutes contain items that need to be actioned. Once the items have been actioned, it is captured at the next board meeting and forms

part of that record. It does not mean the previous meeting minutes get edited to reflect the item has been actioned.

- [44] For the reasons set out above, I find BVLCC 84's records of meeting meetings for September 2021 to August 2022 are inadequate. I will order BVLCC 84 to comply with its obligations to maintain adequate records of meeting minutes pursuant to subsection 55(1) of the Act.

**Issue No. 3: Is a penalty or costs award appropriate?**

- [45] The Applicant has requested that BVLCC 84 reimburse her the cost of filing this application.

- [46] The Tribunal's Rule 48.1 states:

If a Case is not resolved by Settlement Agreement or Consent Order and a CAT Member makes a final Decision, the unsuccessful Party will be required to pay the successful Party's CAT fees unless the CAT member decides otherwise.

- [47] As the Applicant was largely successful in this matter, I am ordering BVLCC 84 to reimburse her \$200 for the fee paid to file this application.

- [48] The Applicant has also requested an order for a penalty against BVLCC 84. She submits that the quantum of the penalty applied should be in line with the "CAT protocol," taking into account the actions and behaviours of the Respondent during this proceeding.

- [49] Clause 1.44 (1) 6 of the Act provides that a penalty may be ordered if there is a finding that the board refused to provide access to records without reasonable excuse. This provision limits the Tribunal's jurisdiction to order a penalty and it cannot consider the actions and behaviours of parties during the Tribunal proceedings when making such an order. In this case, I have not made a finding that BVLCC 84 refused to provide records without reasonable excuse. Rather, the evidence demonstrates that it is more likely than not, that BVLCC 84's inexperience with managing request for records contributed to the delay in providing the records, rather than a refusal. For these reasons, I decline to order a penalty against BVLCC 84.

**D. ORDER**

- [50] The Tribunal Orders that:

1. Brant Vacant Land Condominium Corporation No. 84 shall immediately take steps to ensure the records of the corporation, particularly minutes of board meetings, are complete and clear. It shall refrain from editing or amending historical board meeting minutes without properly documenting the necessary changes and the reasons for the change.
2. Brant Vacant Land Condominium Corporation No. 84 shall, within thirty (30) days of this Order pay \$200 to the Applicant for the cost of filing this application.

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Dawn Wickett  
Member, Condominium Authority Tribunal

Released on: November 23, 2023