

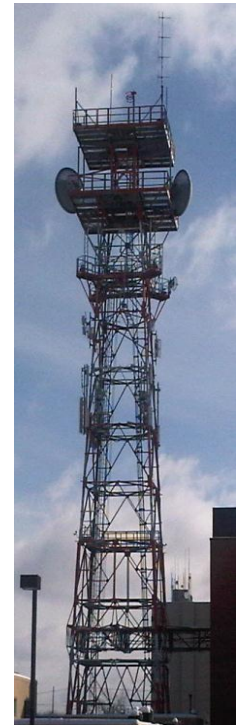


There's a cell phone tower on my condominium roof

By Rod Escayola on February 13, 2011

There have been many studies over the past few years about the potential impact cell phone towers erected near residences may have on humans. Some scientists have reported that long term exposure to Radio Frequency (RF) energy used to communicate from cell phones to towers can lead to changes in brain activity, brain reaction times and the time it takes to fall asleep. On the other hand, Health Canada has reported that the general consensus in the scientific community is that the RF energy is too low to cause health effects in humans and that contrary scientific findings have not yet been confirmed. Nevertheless, Health Canada has established guidelines for safe human exposure to RF energy in their Safety Code 6. Industry Canada, the federal regulator responsible for the approval of RF equipment, has adopted Health Canada's guidelines as their regulatory exposure standard. Antenna proponents are required to perform an assessment of RF exposure on proposed antenna systems before their installation in order to ensure compliance with these policies.

Without picking sides in this scientific debate, we are often requested to advise on the question of whether a condominium corporation can install a cell phone tower on the Condominium roof or on the property. Such an important change can create confusion and friction within the condominium community and must be approached carefully and with tact.



Can the Condominium Corporation install a cell phone tower on my roof?

The Condominium Act provides that either the condominium corporation or an owner may make an addition, alteration or improvement to the condominium's common elements, such as the roof. The most common method for the Corporation to proceed with such an "addition, alteration or improvement to the common element" is by providing notice to the owners describing the proposed alteration, advising them of the estimated cost of the proposed alteration and advising the owner of their right to requisition a meeting of the owners within 30 days of the notice.

However, if the alteration constitutes a "substantial change" in the assets of the corporation, the corporation is required to obtain a favourable vote from the owners who own at least 66 2/3 per cent of the units of the corporation. A change is usually considered "substantial" if its estimated cost, whether incurred before or after the current fiscal year, exceeds the lesser of 10 per cent of the annual budgeted common expenses for the current fiscal year or if the board elects to treat it as substantial. Considering the reaction that cell phone towers often trigger, the preferred method is to treat this change as a substantial one even if there is no cost to the corporation.



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Often, cell phone providers propose to rent part of the common element from the condominium corporation in order to operate its tower. The rent paid is sometimes used to increase the reserve fund contribution, to offset the cost of new projects or may even be used to offset increases to common expenses. To do so, the Condominium corporation is required to pass a by-law, which must be approved by vote by a majority of the unit owners. The by-law would set out the purpose of the lease or easement.

The proposal to install a cell phone tower on the roof is almost certain to spark passion and reaction. It is necessary to obtain the owner's assent, one way or the other, and it will surely require tact and openness on the part of the Board.

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