

“Smoking” Board Meeting Minutes and Unit Owners Forum, 2007 through 2017

A “business judgment” of consistently dismissive and indifferent lip service.

A persistent and systematic failure to negotiate in good faith.

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“One approach to prevent the alienation of unit owners is to provide for an ‘owners’ forum’ during the meeting. This forum gives the owners an opportunity to comment or ask questions of the board either at the beginning or end of the meeting. Even though the owners have no right to vote on board matters, the owner’s forum provides . . . a sense of participation. . . .”

<http://rudolphkaplan.com/board-meetings-v-membership-meetings>

“[T]he business judgment rule creates a presumption that the condominium board’s judgment was in good faith and for the best interest of the association. . . .

“However, . . . *Davis v. Dyson* [2008] . . . is significant as the court signaled that it will not let board member defendants off the hook simply by showing that they acted in ‘good faith’. Rather, the board must show good faith AND diligence. Specifically, . . . board members ‘may not close their eyes to what is going on about them in corporate business, and must in appropriate circumstances make such reasonable inquiry as an ordinarily prudent person under similar circumstances.’

“The . . . court seemed to rule that regardless of evidence of good faith by the board, a breach of fiduciary duty occurs when a board fails to comply with a law or statute to the detriment of the condominium association. . . .

“Most modern declarations contain a provision whereby the association indemnifies and holds the individual board members harmless from claims or judgments. However, . . . the association may not provide indemnity protection if an individual board member acted in bad faith or with malice.”

<http://rudolphkaplan.com/fiduciary-duty-and-the-business-judgment-rule>

Minutes, Regular Meeting, January 8, 2007 – Security and Safety Committee

"Effective January 1, 2007, a new carbon monoxide detector law went into effect, and this is related to fossil fuels. Habitat is checking with our attorney to see if every unit will be required to install one of these along with their smoke detector. As information is obtained, it will be posted. As a reminder, all units are required to have a working smoke detector in their unit. When the convector filters are changed maintenance does check for working smoke detectors. There are still many who do not have one and these Unit Owners will be fined."

Smoke enforcement under Habitat management.

Habitat Company is best known for low-income public housing and as the largest single manager for the Chicago Housing Authority. It is a dubious distinction in Chicago's "New Eastside."

Unit Owners Forum, May 14, 2007

“#3626: He has an issue with the unit below him using a significant amount of incense that comes into his unit. He called Security and was told they cannot do anything about smells, only noise. He has spoken with the resident numerous times regarding this issue and he is not cooperating.”

“Richard Vicens [Property Manager] responded that this is a difficult issue in this building, whether is be someone smoking in a unit or using incense, it can infiltrate into other units. Unit Owners do have the right to smoke within their units and management cannot do anything as this is their right. He will speak with the resident regarding this issue.”

Unit Owners Forum, October 13, 2008

"Virginia Clendenin, #1511: She reported that she has a complaint regarding smoking, especially over the past 2-3 months with smoke coming into her Unit. She has lived here for 40+ years and this is her first experience with this. In addition, she finds cigarette butts on her balcony and today an empty package (that she brought in to show). The smoke makes her nauseated. She has complained to Management. She has a right to live in her Unit without being sick. She is wondering if she will have to move because of this or can anything be done?"

"Lynn Smith [Property Manager, Habitat Company] and Sheila Byrne [Property Supervisor, Habitat Company] will look into this further with her."

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Over a period of time Virginia Clendenin's health worsened and subsequently she did move, selling at a disadvantage to a predatory real estate agent. She died a few months after moving out of ODE.

**Minutes, Regular Meeting, September 8, 2009,
Management Report [Phil Pritzker, Property
Manager, Habitat Company]**

“On the upper level of the Sun Deck a number of cigarette butts have been found. These seem to be coming from floors above. Especially with all of the money that has just been spent to repair the Sun Deck, anyone who chooses to smoke is asked to please not throw these butts off their balconies, dispose of them properly. Residents are reminded smoking is not allowed on the Sun Deck or the Plaza Deck.”

As shown in current photos, under Habitat management, the “2009” problem of cigarette butts on the Sun Deck persists today.

Minutes, Regular Meeting, May 4, 2010, Management Report

“As a reminder to all residents, Phil Pritzker [stated that] smoking is not allowed in the stairwells, recently there have been complaints. A lot of effort has been made by the Safety and Security Committee and the Chicago Fire Department and the Management regarding emergency procedures and evacuations. Smoking is not allowed in any area outside of your individual unit. If you are found to be smoking in any common element, you will be referred to the Rules and Hearings Committee for the recommendation of a fine. It is not safe, it is nor proper and it is against the Rules and Regulations.”

Minutes, Regular Meeting, June 7, 2010, Management Report

"Smoking on balconies: residents should be courteous of those about, have proper receptacles and absolutely no flicking of butts off the balconies; there have been reports of burn marks on furniture, etc."

Unit Owners Forum, June 6, 2011

“Eunice Sproesser, #1810: She continues to find cigarette butts on her balcony. She also found an empty box of Marlboros. Is there anything that can be done to find out who is doing this; who smokes Marlboros above her?”

“Jim Jacobsen [Board president] responded that Management does everything that they can but this is a challenge.”

“Phil Pritzker responded that they can continue to use the *Newsletter* as a way to inform residents that throwing anything off of balconies is prohibited, including cigarette butts. At other buildings he has been at, he has attempted to go to units above with reminder letters, but it is extremely difficult to find the specific person responsible. Management will be vigilant in light of this complaint.”

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Enforcement by Habitat (“Management does everything they can ...”).

Unit Owners Forum, May 7, 2012

"Florence Schale, #805: Her concern is smoking in the bathroom that she can smell; this has been happening in the past few months. It is happening between 10:30 and 11:00 in the morning. Is anybody else having this?"

"Ann Marie McManus, #3811: She commented on cooking smells and how she actually met her neighbor because of cooking onions. There was a pounding on her door, her neighbor came into her apartment, went over to the convector and started stuffing plastic bags around the pipe by the shared wall. This was how the smell of onions was getting into the unit next door. (They all still get along!) Just an idea where a smell can be coming from."

Smoke migrates from one unit into common areas between back-to-back bathrooms or kitchens and then into other units.

Unit Owners Forum, July 2, 2012

“Janet Bacon, #1705: She commented she has a concern. Her floor is undergoing remodeling. Her current door is wonderful but it is going to be removed and replaced and she is worried it will be replaced with an inferior door. She has been told by unit owners who have had their doors replaced already, that large gaps are left after they are installed that allows more dust and sound to enter a unit. So will more smoke get in?”

“Jim Jacobsen responded that there is no issue with the previous doors. The doors are designed to allow the correct ventilation. Air is brought into the hallways from the outside; it goes under the doors into the units and then is exhausted through the exhausts in the kitchens and baths. The doors are engineered/designed according the specifications of the engineers and architects.”

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Minutes, Regular Meeting, November 5, 2012, Rules and Hearings Committee

"Ben Velez moved to fine a Unit Owner \$50.00 for smoking on the Pool Deck Area. Seconded and unanimously approved."

Minutes, Regular Meeting, May 6, 2013, Safety and Security Committee

"Another issue is people smoking on the property; this is not allowed."

Minutes, Regular Meeting, July 1, 2013, Safety and Security Committee

"Ben Velez moved to fine a Unit Owner \$25.00 for smoking in a common area. Seconded by Wendell Bowman and unanimously approved.

Minutes, Regular Meeting, August 4, 2014, Safety and Security Committee

"Jim Bagley moved to fine a Unit Owner \$250.00 for Smoking on Plaza Deck. Seconded by Wendell Bowman and unanimously approved."

**Minutes, Regular Meeting, December 1, 2014,
Maintenance and Engineering Committee**

"Some other items being discussed are a designated smoking spot at the building."

Unit Owners Forum, January 5, 2015

“David Bowman, #3217: He was wondering if there was something that could be done to make this a smoke-free building. Something like a phase approach, existing Unit Owners being grandfathered in or something. With the new windows air won’t be able to escape as much, this could become more of a problem. There now are new buildings that are smoke-free.”

“Jim Jacobsen responded that to start off 2015 we have two of the hottest topics; pets and smoking! Regarding smoking, he really doesn’t know the answer. There are some legal issues involved with just declaring a building smoke-free. Courts are reviewing similar issues. This is something that is coming up more and more with buildings and is something that is being followed.”

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Minutes, Regular Meeting, March 2, 2015, Rules and Hearings Committee

"John Stanton moved to fine a Unit Owner \$100.00 for smoking in a common area, and to send a warning letter regarding a Noise & Nuisance Violation. Seconded by Jerry Gross and unanimously approved."

Minutes, Regular Meeting, June 1, 2015, Management Report

“No Smoking Reminder: There is no smoking allowed on the 7th Floor Plaza Deck or the Sun Deck, or in any other Common Areas of the building.”

Minutes, Regular Meeting, October 1, 2015, Safety and Security Committee

“Jim Bagley reported that that since the last Regular Meeting there have been two Committee Meetings. In summary, at one of these meetings the issue of smoking odors was discussed and this has been a topic that has been brought up pretty regularly. The Committee is looking to the Board for both short term and long term remedies.”

Unit Owners Forum, October 1, 2015

"Dennis Gates, #3017: He commented in the past when he was on the Board there had been an issue of a resident who was allergic to smoke and the units above and below his were very heavy smokers. He actually went into this unit and confirmed the smoke. It ended up that every outlet, every opening, opening around pipes, etc. were sealed and that did solve his problem."

Anecdotal rather than evidence-based assessment. (Cf., Hammond passive nicotine monitor.)

Note that smoke exfiltrates from offending apartment and then into common element areas. It may migrate horizontally, vertically, or both.

Energetic use of a caulking gun, however well intended, provides negligible assurance of remediation.

Minutes, Regular Meeting, November 2, 2015, Safety and Security Committee

“Jim Bagley reported that the second topic was regarding smoking in the building. The group continues to site health concerns with second hand smoke in the building. The people attending very much would like to see a ban on smoking throughout the building, including residential areas. They would like to encourage the Board to become more involved in this.”

Minutes, Regular Meeting, January 4, 2016, Safety and Security Committee

"They continue to discuss and look at what can be done regarding the problem of second hand smoke/marijuana smoke; an issue brought up during the Unit Owners Forum. The Committee is looking at what steps can be taken to correct the situation."

Unit Owners Forum, January 4, 2016

"Garrard McClendon, #2730: He wishes that this \$90,000.00 [for a signage kiosk] would be spent on the nuisance of marijuana smoke coming through the wall into his home. It is frustrating. Use \$90,000.00 on something people want and need. . . . The marijuana smoke has been dismissed every time he has brought it up. Somebody can smoke an illegal substance, creeping through his walls, disrupting his family; this is problematic."

Smoke migrates from one unit into common areas between adjoining bathrooms or kitchens and then into second unit.

Minutes, Regular Meeting, February 1, 2016, Maintenance and Engineering Committee

"Joseph Ruggirello reported that . . . they received some interesting information regarding the convectors/pipes and something may be able to be done regarding smoke penetration."

What interesting information? There was no follow-up.

Minutes, Regular Meeting, February 1, 2016, Safety and Security Committee

“The majority of the time was spent discussing topics that are ongoing . . . smoking, etc. . . .”

Minutes, Regular Meeting, February 1, 2016, Rules and Hearings Committee

"John Stanton moved to fine a Unit Owner \$1,500.00 plus the cost of cleaning and balcony repair as a result of the smoke damage (cost estimated at \$5,042.00). Seconded by Bryan Curry and unanimously approved."

Minutes, Regular Meeting, November 7, 2016, Management Report

“Surveys: Recently two (2) different surveys out in the community right now. One is regarding the Bus, available at the Management Desk or on the Bus; so far thirty responses have come in. The second one covers three topics; Pets, Rentals and Smoking and about a hundred and fifty responses have come in (16%), and this can be submitted through the end of the month. Once all of the information is collected and sorted, it will be given to the Board.”

Minutes, Regular Meeting, November 7, 2016, Safety and Security Committee

“A suggestion did come from Manny Gray [security] regarding cooking smoke, when it infiltrates the hallways and sets off the alarms. The suggestion is that if any resident happens to burn something enough to create that much smoke to set off the alarm, please call down to the Security Desk and inform them, this way they know exactly where to go.”

“Dean Miller [Project Manager] added that when the alarm goes off, it automatically goes to the Fire Department so this would be a big help.”

Unit Owners Forum, February 6, 2017

“Pat Reis, #1505: There was an article this Sunday in the *Tribune* regarding pot smoking and what possibly can be done and she cut it out for the Board and Management in case they hadn’t seen it. She and her neighbor had to put up with the pot smoke in the hallway for quite a while. She would like to see smoking banned in units.”

