

The Other Side of the Story about the Proposed Water's Edge Amendments: Fact Checking

BACKGROUND:

As you may know, the five directors of Water's Edge are trying to force a few individual unit-owners to pay for the replacement of all the rooftop skylights in Water's Edge. The skylights are actually the common property of our condominium. They are NOT part of any individual unit despite what our directors claim. (More about that below.) All these skylights were originally installed by the developer at the time of construction of our community. None was installed by any unit-owner despite what our directors have implied.

Most of these skylights are now about thirty-eight (38) years old and well-beyond their serviceable life. In short, all but a few need to be replaced. If they are not replaced, soon, they may leak into the buildings or even collapse during a storm. This could cause serious bodily injury and property damage. Of course, our Condominium Association would be legally responsible for this damage. This means all unit-owners would be collectively responsible for these damages that could be in the millions if anybody is seriously injured. Just think what fun personal injury lawyers will have. As a result, your unit might be foreclosed on and sold to pay these damages. Sorry, but that is how the system works.

According to our condominium's governing documents, it is the clear responsibility of our Condominium Association (us) to maintain, repair, and replace these skylights as needed. Nevertheless, our present five directors do not want to pay to maintain or replace these skylights. Our five directors want a few individual unit-owners to replace these skylights at the unit-owner's individual expense. The directors estimate the cost to each individual unit-owner will be \$22,975 or \$27,270. The unit-owner must pay for the skylight in cash within 30 days of the work being completed. This is what the letter from the directors' states. If an individual unit-owner will not pay for a new skylight, our directors intend to board it up. (Source: Water's Edge Roof Replacement Project March 2023 Update.)

SOME FACT CHECKING

DIRECTORS CLAIM 1:

The board's letter of April 17, 2023, says, "The Unit owners Association of Water's Edge, A Condominium (the Association) has always considered the electively installed skylights on twenty-two (22) units to be the individual unit owner's responsibility."

FACT CHECK 1: FALSE

A thorough examination of our Declarations, By-laws, Rules, Resolutions and Policies reveals that they do not contain a single mention of skylights. There is no such policy. Furthermore, the skylights were not "electively" installed. The skylights were all installed by the developer when Water's Edge was built circa 1985. A few skylights may have been replaced since then, but none was originally installed by any unit-owner.

It has been decided by the Fairfax County Board of Building Code Appeals, a government agency, that a skylight is NOT the responsibility of an individual unit-owner. This government body has officially determined that these skylights or "fenestration" are not part of an individual's unit. After a hearing, this official government body decided that there is nothing in our Declarations or By-laws that makes the individual unit-owner responsible for a skylight.

The Board's vote on this decision, as recorded in the official records of Fairfax County, was five (5) County Board members voting in favor, and none opposed, with no abstentions. Technically, this decision applies only to the one unit-owner who asked for it. But if our directors take their claim to court, do you think they have a particularly good chance of winning? Or will they be wasting your dues again? **How much will your dues go up to pay for their futile litigation?**

All Water's Edge board members received a copy of this official Fairfax County decision several months ago. Yet they are ignoring it and attempting to circumvent it through a change to our Declarations and By-laws. This is the real reason for the proposed Amendments, but they did not tell you that. The official decision of the Fairfax County Government is attached. Please read it.

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[You can see the official County Decision online by clicking here.](#)

DIRECTORS CLAIM 2:

"This amendment does not change any of the Association's policies and is being recommended for the purpose of adding clarity to our existing Declaration and By-laws."

FACT CHECK 2; FALSE

The proposed amendments will fundamentally change our existing Declarations and Bylaws. It has been decided by the Fairfax County Board of Building Appeals, after a formal hearing process, that the skylights are the property of the Water's Edge condominium association and not part of an individual unit. The proposed Amendments would change that.

The proposed amendments would transfer ownership of the skylights from the condominium association to a few individual unit-owners. In other words, the amendments would give away the common property of all condominium owners. **This is illegal unless 100 percent (100%) of the unit-owners agree.** See below.

DIRECTORS CLAIM 3:

Two-thirds (2/3) of unit owners are needed to approve the proposed Amendments.

FACT CHECK 3: FALSE

The truth is that the proposed Amendments are not legal unless approved by **one hundred percent (100%)** of unit-owners, according to the Virginia Condominium Act, which says:

"E. Except to the extent expressly permitted or expressly required by other provisions of this chapter or agreed to by 100 percent of the unit owners, no amendment to the condominium instruments shall change:

- i) the boundaries of any unit;*
- ii) the undivided interest in the common elements;*
- iii) the liability for common expenses; or,*
- iv) the number of votes in the unit owners' association that appertains to any unit."*
(VA Code Section 55.1-1934, Subsection E.)

The proposed amendments change:

- (i) the boundaries of multiple units,
- (ii) the undivided interest in the common elements; and,
- (iii) the liability for common expense.

All of these changes are literally and clearly prohibited by the Condominium Act without 100% of the unit-owners agreeing. It is a known fact that 100% of unit-owners will not be approving these Amendments.

Any attempt to record or enforce the proposed Amendments, if not approved by 100% of unit-owners, will lead to expensive and drawn-out litigation. **Our monthly dues will have to be increased to pay for this.**

This will also cause a **delay in the badly needed roof replacements**. If our old roofs start to leak, this may cause major damage to individual unit interiors and their belongings. Needless to say, the Condominium Association would be responsible for this expensive damage.

These proposed Amendments are penny wise but pound foolish.

DIRECTORS CLAIM 4:

"Each unit-owner with a skylight is given the opportunity to sign an agreement acknowledging that the skylight is part of the individual unit, and it is the individual unit owners (sic) sole fiscal responsibility to maintain, upkeep and/or replace the skylight, as required. If unit owner does not sign the acknowledgment, the Board shall inform the unit owner that the skylight will therefore be treated as a limited common element."

FACT CHECK 4 : False.

The truth is that skylights have always been a part of the common elements. (See Fact Check 1 above.) The directors are offering to give away part of our common property to individual unit-owners. The directors do not have that right. Common elements cannot be legally given away without the approval of 100% of our unit-owners. (See Fact Check 3 above.)

If the skylights do belong to individual unit-owners (as the directors incorrectly claim), then the directors cannot take away the skylights from the unit-owners and make them part of the common

elements of the condo association. As discussed above, that would be **illegal without one hundred percent (100%) of the unit-owners agreeing**. Yet that is just what the directors say they are going to do. Any such attempt would involve our condo association in a lot of **futile and expensive litigation, leading to another increase in our dues**. This would be penny wise and pound foolish.

The directors are trying to save money by renegeing on their responsibility to maintain the skylights. But this misguided effort will probably have the opposite result.

DIRECTORS CLAIM 5:

“The Board has voted to proceed with the alteration of said limited common element. This includes removal of the skylight and roofing in the opening (the unit will no longer have a skylight).”

FACT CHECK 5: TRUE BUT NOT LEGAL

Our directors have no legal right to board up or remove, or give away, any part of the common elements. Instead, our condominium association has a legal obligation to maintain all parts of the common elements in good condition. When you purchased your unit, you were promised that all the common areas and facilities in Water’s Edge would be maintained in good condition. Our By-laws state as follows:

(c) Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality. (Water’s Edge By-laws, Article VI, Section 1(c).)

Now boarding up the skylights is obviously not the original construction, so what the directors plan to do is a violation of our Bylaws.

Do you want the common areas of Water’s Edge to be boarded up one by one? Where will this stop? Should the pool be boarded up? Should our condo association stop caring for our patios, porches, and decks? Should we fill in the lake or maybe abandon the pathways, tennis court, and dog park? Not all owners use these amenities, so why should we all pay for them? What about parking spaces? Not everyone has a car, but some have more than one. Maybe we can transfer ownership of parking spaces to individual unit-owners if they will pay for repaving. Otherwise, we can take away their parking spaces and plant flowers there. Where will this process lead? Is that even legal? **And what will it do to your real estate value?**

AMENITY, LOOK, and FEEL OF WATER'S EDGE

The skylights are an amenity that contribute to the look and feel of our community. They are part of what makes Water’s Edge an attractive place, and this increases the desirability and market value of your unit. If the skylights are boarded up, it will cause your property value to go down.

And where will this boarding-up end? What if the directors decide to remove all the decks the next time they need replacement? Water's Edge has spent millions of dollars replacing all the decks. They have been replaced not once, but twice.

By the same logic, what if the Association decided not to replace the walkways, porches, patios, stoops, and stairways that serve only 1 or 2 individual units? Or, what if they decide to board up the swimming pool, or fill in the lake, unless some individual unit-owners are willing to maintain them? Where will this abandonment of our common elements end?

CONCLUSION

Please send this email to all your friends in Water's Edge and urge them to NOT vote for the proposed amendment. You do this by NOT returning the document they sent you. It is a bad idea and will have bad results.

If you already sent in your vote, send it in again indicating that you do NOT support the amendments. There is nothing that says you cannot do this. You can contact the author at 703-254-5489 or reply to this email.

[You can see the official County Decision online by clicking here.](#)

PLEASE CHECK OUT THE DISCUSSION FORUM AT WWW.SAWEWATERSEGE.COM.