Recreational Amenities Along the Nith River

Regulatory, Financial, Insurance and Liability Considerations Background and Board Position

The Board has investigated requests to consider a dock on the Nith River and/or develop a shared recreational area on or near the riverbank on the common elements. Potential improvements include a dock, fire pit, seating area, gazebo, landscaping and other amenities on condominium common property.

After considering regulatory requirements, flood risks, insurance and liability exposure, construction and maintenance costs, governance requirements, long-term financial obligations, and the persistent wet condition of much of the rear landscape, the Board has concluded that these projects are not appropriate for this 14-unit condominium corporation.

Such proposals would add structures or improvements to common property, create ongoing responsibilities, and require all owners to share the related costs and risks, regardless of use.

1. **Regulatory, Drainage and Flood-Related Restrictions** The Nith River is subject to flooding, and property along its banks may fall within regulated areas where development, construction and alterations are restricted.

   The Grand River Conservation Authority (GRCA) regulates development and other activities within its jurisdiction. The Township of Wilmot also imposes requirements under applicable bylaws, planning regulations and other legislation.

   Depending on the location, design and scope of a proposal, a dock or recreational area could require permits, technical assessments and approval from one or both authorities. Even seemingly minor improvements, such as a fire pit, stone seating area, landscaping, grading or a small structure, will require review if they affect a regulated area or alter the land.

   Requirements may address location, dimensions, materials, construction methods, use, flood hazards, environmental impacts, erosion, site alterations and seasonal removal or storage. A dock, for example, may need to be removed during high-water periods and stored off-site.

   Approval cannot be assumed. The corporation would need to confirm all applicable requirements and costs before committing funds to design, applications or construction.

   The Board has also investigated persistent wet conditions in portions of the common property adjacent to the riverbank. The original developer and the builder both inspected the area and advised that the drainage was consistent with the approved plans and requirements. The Township of Wilmot was also contacted, and the area was inspected by the township and GRCA. These are their findings:

   "…the history of the rear of this property is that is has been wet. No grading changes were made to this area given restrictions from the Grand River Conservation Authority. There was no intention as part of the approval that water would drain directly to the Nith River. Historic drainage patterns were intended to stay the same. Given the grading and site design was completed as approved, further changes to the rear of the property will not be required at this time. The condominium corporation can certainly consider options to alter drainage and approach CRGA to determine if approval could be received to modify the grading to have

the water reach the Nith River sooner, but to be clear this is not within the scope or anticipated outcome of the development."

For the condominium corporation to begin to investigate options to alter the drainage, we would incur significant cost for engineering assessments and written proposals which we would then have to submit for regulatory approval, with no guarantee of approval or success. Consequently we have determined that it is not feasible to proceed and we have reluctantly accepted the limitations that result from the drainage issues we are left with.

2. Insurance, Safety and Liability Exposure

A dock or recreational amenity on common property would create additional risks, including slips and falls, unsafe access, changing river conditions, flooding, erosion, structural deterioration, wind damage and damage to or failure of the installation.

A fire pit would also require consideration of supervision, combustible materials, smoke, burns and potential damage to surrounding property.

Before proceeding, the corporation would need to consult its insurance broker to determine whether the proposed installation(s) and use would be covered, whether additional coverage or endorsements would be required, and whether premiums, deductibles or other conditions would change.

Insurance would not eliminate exposure to claims, legal expenses, deductibles or losses beyond the direct cost of installation or repair. These risks are particularly significant for a 14- unit corporation, where the financial consequences of an incident would be shared among relatively few owners.

3. Construction, Maintenance and Long-Term Financial Obligations

The cost of either project would extend well beyond the initial installation. Potential expenses could include:

- GRCA and municipal applications, permits and technical assessments.
- Site surveys, design work, professional advice and engineering.
- Site preparation, grading, landscaping, erosion control and construction materials.
- Purchase, construction and installation of a dock, fire pit, gazebo, seating area or other improvements.
- Inspections, cleaning, maintenance and repairs.
- Seasonal removal, reinstallation and storage of a dock, where required.
- Protection, removal, restoration or replacement following flooding or other damage.
- Additional insurance, safety measures and risk-management requirements.
- Future repairs, upgrades and eventual replacement.

The corporation would need to assess the full life-cycle cost rather than merely the initial construction price.

Either project would also create future maintenance and replacement obligations requiring proper assessment and funding. Proceeding would require an immediate, on-site reserve fund study addressing maintenance requirements, expected useful life, repair costs and eventual replacement costs.

This would create an additional professional expense and would require changes to reserve

fund planning and contributions. Common expenses would increase, and owners could face future special assessments. With only 14 units contributing, even modest ongoing costs or an unexpected major repair could significantly affect each owner.

4. Condominium Governance, Use and Administration

Any proposal involving common property must comply with the Condominium Act, 1998, the corporation's declaration, by-laws and rules, and other applicable legal requirements.

Depending on the scope of the work, specific owner approvals may be required for additions, alterations or improvements to the common elements. The required process and voting threshold would need to be confirmed before proceeding.

The corporation would also need rules governing access, guests, permitted uses, safety, maintenance, damage, cleaning and responsibility for incidents. Ongoing administration could include:

- Establishing access, reservation or time-limit rules.
- Cleaning, garbage and ash removal, landscaping and routine maintenance.
- Inspections, fire-safety measures and repairs.
- Responding to unsafe conditions, flooding or other damage.
- Handling complaints, disputes, noise and inappropriate use.
- Arranging seasonal preparation, removal, reinstallation and storage where required.

These responsibilities would increase the Board's workload and could require additional spending on maintenance, administration or outside services.

Individual owners cannot independently install private docks or other structures on common property. Such an installation would require the corporation's authorization and any other approvals required by the governing documents and applicable law.

Private use would not change the status of the land. Allowing one owner to occupy or alter common property would raise issues of fairness, exclusive use, maintenance, insurance, liability and the rights of other owners. It could also create a precedent requiring the corporation to consider similar requests from others.

5. Fairness, Affordability and the Interests of All Owners

The requested facilities would provide recreational benefits, but the corporation would bear the financial and legal responsibilities. Some owners might use them frequently, while others might rarely or never do so. All owners would nevertheless contribute to construction, insurance, maintenance, reserve fund requirements, repairs and replacement.

The availability of common property does not, by itself, justify developing it for optional recreational use. The Board must protect the corporation's assets, maintain appropriate reserves and avoid unnecessary liability.

For a 14-unit corporation, the costs and responsibilities may be disproportionate to the benefits, particularly given the flood-related restrictions, drainage conditions, uncertain approvals and long-term maintenance requirements.

Conclusion and Board Position

After considering the regulatory uncertainty, flood and drainage conditions, insurance and liability exposure, construction and operating costs, reserve fund implications, governance requirements and administrative responsibilities, the Board has determined that constructing, owning or managing a dock or recreational amenity on or near the Nith River is not appropriate for this condominium corporation.

Either proposal would require approvals, insurance, continuing maintenance, long-term funding and an immediate on-site reserve fund study. The resulting obligations would affect every owner, whether or not the facilities were used.

The Board's responsibility is to protect the condominium corporation and act in the collective interests of all owners—not to commit common property and shared financial resources to optional recreational facilities simply because some owners would like them. Any proposed amenity must be justified by its overall benefit, affordability over its full life cycle, and the risks and responsibilities it would create.

The Board spent significant time investigating every aspect of these considerations, including numerous correspondence and meetings with stakeholders and regulatory authorities, reviews of the condominium and regulatory documents, research, and internal meetings. In the Board's assessment, the potential costs, risks and long-term obligations outweigh the benefits. The corporation's limited size makes financial prudence especially important and this Board takes potential increases to common expenses or future special assessments very seriously.

Accordingly, the Board decided it should not pursue the construction, ownership or management of a dock, permanent recreational area or similar optional amenity on common property along the riverbank. Individual owners cannot independently install private docks or other structures on common property.

Any future proposal would need to demonstrate a compelling benefit to the corporation as a whole and satisfactorily address the regulatory, legal, insurance, financial, reserve fund and operational concerns identified in this document.