

# The Pierre Condominium Association

## MINUTES OF July 19, 2006 BOARD OF DIRECTORS MEETING

### **I. Call to Order**

The Board of Directors meeting was called to order at 7:30 p.m. A quorum was noted. The directors in attendance were: Stu Baker; Janet Fisher; Mary Gootjes; Jose Gomez; Denise Antonucci; and Randy Mehrberg. Absent: Marc Feliciano; Bob Doak; Amy Dickinson. Dan Chalifoux from Wolin-Levin and Titus Ghica were present.

### **II. Approval of Minutes**

The June 2006 minutes of the board meeting were approved.

### **III. Treasurer's Report**

#### THE PIERRE CONDOMINIUM ASSOCIATION TREASURER'S REPORT BOARD MEETING 7/19/06

At 6/30/06, The Pierre Condominium Association had cash balances totaling \$4,320,813, invested in bank money market accounts and bank C/D's.

The current forecast for 2006 anticipates operating income of \$167,055, an increase of \$51,223 from the budget of \$115,832. The primary reason for the increase is that interest income, at this point, is anticipated to be a favorable variance of \$75,000. The budget was conservatively prepared before the timing of the receipt of the Baker settlement money was known. In addition, interest rates have increased substantially over the last few months. Further increase in forecasted interest income could occur if rates continue to increase as expected by many people.

Other expected major variances from budget include; garage income, \$23,000 favorable, plumbing repairs, (\$20,400) unfavorable, and gas costs, (\$15,000) unfavorable. The plumbing variance is due to an unusual amount of plumbing repairs this year. The favorable variance in garage income is primarily due to a decision to purchase the insurance for the garage through the associations' agent instead of being insured by Standard Parking for this year.

The current estimate for cost of the chiller and cooling tower replacements are about 18% or \$70,000 under budget. Due to the roof not being completed in 2005, \$200,000 of this cost will be incurred in 2006.

Garage income for June year-to-date is \$19,960 over budget. In addition to a \$10,664 favorable variance in insurance costs, we are also experiencing positive variances in Salaries & wages and revenue. Transient parking revenue year-to-date is \$3,300 ahead of last year while the full year budget is only \$800 more than last year. The current forecast is for garage revenue to be about \$50,000 compared to the budget of \$27,000.

Respectfully submitted,  
Robert Doak,  
Pierre Treasurer

#### **IV. Building Engineer Report and Renovation of Engineer's Unit**

##### **ENGINEER'S REPORT** *(July 5<sup>th</sup>-July 19<sup>th</sup>)*

###### **Services done in above period:**

- Balanced the air in the hallways between 3<sup>rd</sup> and 12<sup>th</sup> floor (72, 74, 76 degrees)
- A/C to the Game Room (unbelievable!!)
- Repair the Exhaust Fans in the garage (did you notice it?)
- Serviced the kitchen drain and suds zone pipes on the "AN" tier (ten more to go)
- Moved the rail from the stairs leading to the swimming pool (I liked that project!)
- Serviced the A/C unit in the Elevator Mechanical room. (Did you notice the rain in the elevator?)
- All these done in parallel with the owner's Service Request (A/C leaks, toilets leaks, burned out A/C blower, deck leaking in the storage room, etc)
- Walked through the building system with Shaun Monroe (checked with him about possibility to install a by-pass hot water pump.)

###### **Things to be done soon**

- Garage and storage room clean-up
- Service to the kitchen drains to the remaining 10 tiers
- Smoke "leak" in unit 10AN
- Repaint the stairs (where the rail was moved) leading to the Swimming pool
- Remove all the unnecessary construction materials left in garage in various locations (A/C pipes, wood, studs, hardwood, buckets, etc)
- I need a new uniform!

###### **REMARKS**

I have no words to thank you for your support and patience. Since I came here I felt your professionalism in all regards and I feel like I'm part of the family for a long time. I want to thank the maintenance team, especially Juan and David

Thank you again!  
Dumitru Titus Ghica

Proposed Renovation: Titus advised the Board of the work needed for the engineer's unit, including cost estimates for new carpeting, ceramic floor tile, wood flooring, a new shower, kitchen cabinets and new sinks for the bathrooms. Titus will be doing much of the labor himself. Mary Gootjes made a motion, which Denise Antonucci seconded, to approve \$11,000 for this work to be done to the unit. The motion passed unanimously.

## **V. Management Report**

The Board reviewed Dan Chalifoux's written management report dated July 19, 2006, and discussed the following items.

Carpet Cleaning: The hallway carpets have been professionally cleaned.

Pool Stair Railing: Dan is investigating electric chairs for rooftop access. The rail on the stairway has been moved to the other side of the stairway.

Carbon Monoxide Detector Law: Dan advised the Board of the new mandatory carbon monoxide detector law. Dan will investigate this law further before advising the owners of any requirements.

## **VI. Old Business**

Baker Settlement: Janet Fisher advised that the letters from the attorneys will be distributed by the end of July.

## **VII. Committee Reports**

Lobby Renovation: The Lobby Committee advised the Board that they are still working with Perimeter Builders on the design and the budget. David Thomas of Perimeter Builders made a presentation on the Lobby Renovation Project and distributed a revised budget for the project. The budget is broken down into three sections: 1) Repair and Replacement; 2) New Construction; and 3) Alternates.

David Thomas advised the board that obtaining the necessary building permits could take 2 months. The Board discussed that the permit process could begin while the design and budget process continues. The Board also discussed the need for a review of the building security systems.

Mary Gootjes made a motion, which Denise Antonucci seconded, to authorize Perimeter Builders to initiate the process of obtaining a building permit from the City of Chicago for the lobby project for a cost of \$1,500. Motion passed unanimously.

Window Committee: Gail Ruden reported that the committee has received a third proposal from a consultant and that reference checks are ongoing.

Building Party/Pot Luck: Due to the success of Ali's anniversary party, the Board is looking for volunteers to organize another owner's party on the roof and/or in the party room after summer.

Pierre Clean Air Committee: Tim O'Brien presented a packet to the board. The following is a written report submitted by Tim O'Brien. Owners that wish to review the attachments to this report can find the entire report with the doorman.

## ***A Report to the Pierre Condominium Board of Directors***

### ***Information in Regard to A Smoke Free Pierre Condominium***

#### ***The Current Situation at The Pierre***

Presently, tobacco smoking is allowed without any restriction inside Owner apartments at the Pierre; but with that exception, no smoking is allowed elsewhere in the building, in the common areas, on the roof deck, in the garage, etc.

At both May and June 2006 Board of Directors Meetings, owners and Board Members discussed the current situation at The Pierre in regard to issues of clean indoor air and Environmental Tobacco Smoke, or Secondhand Smoke, inside the building. A number of non-smoker unit owners (Mehrberg, Doak, Feliciano, O'Brien and others) mentioned that on various recent occasions, tobacco smoke has migrated into their units. It was specified by each owner that the tobacco smoke was unwanted and objectionable. Sources of the tobacco smoke are not presently identified. However, it is known that a number of owners in Pierre units are smokers. One long term owner/Board Member remarked that he had recently noticed smoke in his unit and that, in the 20 plus years he has been in the building, the issue of smoke migrating into owner units is worse now than at any time in the past.

At the May 2006 meeting it was decided that an informal opinion be obtained from an attorney regarding the question of whether or not any law prevents an Illinois Condominium Board from enacting a total ban on smoking in a building, including a ban on all smoking in owner units. At the June, 2006 Board meeting, it was the sense of the Board that based on discussions and

complaints regarding unwanted tobacco smoke migration in the building, that the sources of the smoke should be identified. The mechanics of investigating and developing that information, e. g., which unit owners smoke tobacco in their units at the Pierre, was not determined. The Board also suggested formation of a committee to consider the tobacco smoke issues. T. M. O'Brien volunteered to chair the committee and Marc Feliciano volunteered to serve on the committee, which is now known as the Pierre Clean Air Committee.

It was also decided to obtain consultation from an HVAC firm regarding a) investigating current ventilation systems at the Pierre; and b) cleaning the indoor air at the Pierre; and, c) if possible, eliminating the migration of tobacco smoke within the building by HVAC methods. As it turns out, a) and b) are both proper pursuits for an HVAC firm and should proceed in order to improve ventilation at the Pierre to the extent possible, but c) is not technologically possible. It is not possible to eliminate tobacco smoke from a multi-unit building by ventilation or filtration according to national standards groups in the HVAC area, as is more fully discussed below. (See Tab #3, Surgeon General Report, June, 2006; and Tabs #5 and #7 for ASHRAE standards).

### **The Pierre Condominium Declaration**

The Pierre Condominium Declaration, Article VII, para. (g) provides:

No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or occupants. (Tab #1)

Pursuant to Article VII para (g) the Pierre Board has, right now, the legal ability and authority to make an enforceable rule excluding all tobacco smoke from the building. A Model Rule is effecting a total elimination of tobacco smoke from the building is attached at Tab # 10 for the Board's review.

According to Illinois Appellate Court decisions regarding owner use restrictions in condominiums, this provision in the Pierre declaration allows the Board of Directors to legally ban tobacco smoking in owner units, just as owners can be restricted in regard to renting their units; and just as owners can be restricted in regard to having pets in the building, ***Apple II Condominium Association v. Worth Bank and Trust Co.***, 227 Ill. App. 3d 345, 659 N. E. 2d 93, 213 Ill. Dec. 463 (1<sup>st</sup> Dist. 1995). In *Apple II*, the First District Illinois Appellate Court upheld a use restriction regarding renting units. The court held that where a restriction on renting is part of the condominium declaration, the court will presume the restriction is valid unless it can be shown that the restriction is arbitrary, against public policy or violates some fundamental constitutional right

of unit owners (See Tab #2) There is no constitutional or other legal right to smoke tobacco (See Tabs #2, 5 & 6). It is, based upon the Apple II case, and based on the research done by the American Lung Association, the Attorney General of Michigan, and numerous other attorneys, 100% legal to ban smoking in owner condominium units. The standard which an offended unit owner would have to show, in Illinois, is quite a high standard. The unit owner would have to show that the use restriction, e. g. no smoking, is ***“arbitrary, against public policy, or violates some fundamental constitutional right.”*** Again, because this is such an important point, we invite the reader’s attention to the actual holding language of the First District Appellate court in Apple II:

“We hold that an Illinois condominium association may prohibit the leasing of units. . . pursuant to the terms of the condominium declaration. . . When the restriction is made part of the condominium declaration, however, ***we will presume that the restriction is valid and uphold it unless it can be shown that the restriction is arbitrary, against public policy or violates some fundamental right of the unit owners***”. Apple II, 213 Ill.Dec. at 496

The public policy, both in the City of Chicago (Tab # 13) and the State of Illinois, has long been that 2d Hand Smoke is harmful to health and needs to be regulated. Given the current levels of medical and scientific knowledge regarding the dangers of 2d Hand Smoke, no owner would ever convince a court that any smoking ban is against public policy. To the contrary, smoking bans ARE the public policy throughout the United States. The overwhelming weight of authority in all current legal research, and in all medical and scientific research as well as in the publications of national health groups such as the American Lung Association, the American Academy of Pediatricians and many others, is that all indoor smoking must be eliminated in order to make indoor spaces clean, safe and healthy for persons living or working there (see Tabs # 3, 4, 5, 6, 8, 9 & 11). The Pierre Board should note that the State of Illinois recently ordered that all University of Illinois dorms be entirely smoke free. Some of those dorms are privately owned. The amendment to the Illinois Clean Indoor Air act providing for the 100% smoking ban in dormitories is attached at Tab #9.

### **What is Environmental Tobacco Smoke?**

Environmental Tobacco Smoke (ETS) (also known as Secondhand smoke, which is the term of choice in the new Surgeon General’s Report, more fully discussed below) is ***burned or burning tobacco***. The smoke comes from two places: first, the burned end of the tobacco product (cigarette, cigar, pipe) and second, from the smoker himself/herself as the smoke is exhaled into the environment. If that environment is a condominium unit, the tobacco smoke moves from the unit out into the common areas and into other owners’ units.

ETS is by definition toxic or poisonous. The smoker who creates ETS in an apartment also places the harmful elements of the smoke into the apartment space. Those harmful elements—toxins or poisons—including the following substances: Arsenic, Chromium, Carbon Monoxide, Ammonia, Formaldehyde, Hydrogen Cyanide, Methyl Chloride

In the condominium environment, and at the Pierre today, those poisons then migrate to all areas of the building and cannot be stopped from doing so. This is the crux of the problem: one smoking condominium unit owner can and does adversely affect the health and safety of the non-smoking adults and children living around him/her in the building by smoking tobacco.

*Environmental Tobacco Smoke is a Class I carcinogen.* That means ETS causes cancer. Not maybe causes cancer. ETS does cause cancer. Even the tobacco manufacturers now admit the direct cause—effect relationship between tobacco smoke and cancer. (Tab #3) In fact, it has been know for some time that smoking causes damage to virtually every organ in the body.

### **The Surgeon General's Report: June 2006**

On June 28, 2006 the U. S. Surgeon General released the latest government report and research data on ETS (Secondhand smoke) and said: “The debate is over: Secondhand smoke. . . is a serious health hazard that leads to disease and premature death in children and non—smoking adults. Second hand smoke kills people.” The forward to the report indicates “that exposure to secondhand smoke kills more than 3,000 adults from lung cancer, 46,000 from coronary heart disease, and an estimated 430 newborns from sudden infant death syndrome” each year. (Tab #3, p. i)

The executive summary of the Surgeon General's June 2006 report is set out at Tab #3. The major conclusions of the report include the following:

1. Secondhand smoke causes premature death and disease in children and in adults who do not smoke.
2. Children exposed to secondhand smoke are at an increased risk for sudden death syndrome (SIDS), acute respiratory infections, ear infections, and more severe asthma.
3. Exposure of adults to secondhand smoke *has immediate adverse effects* on the cardiovascular system and causes coronary heart disease and lung cancer.
4. The scientific evidence indicates that *there is no risk-free level of exposure to secondhand smoke.*
5. Many millions of Americans, both children and adults, are still exposed to secondhand smoke in their homes and workplaces despite substantial progress in tobacco control

6. Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. ***Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke. (Tab #3, p. 9).***

The report emphasizes that “Research reviewed in this report indicates that policies creating completely smoke-free environments are the most economical and efficient approaches to providing this protection. Additionally, neither central heating, ventilating, and air conditioning systems nor separately ventilated rooms control exposures to secondhand smoke.” (Tab #3, p. 23).

### **Tobacco Smoke Causes Disease and Death in Children**

One of the more alarming conclusions confirmed by the Surgeon General’s June 2006 Report is that ETS/Secondhand smoke causes disease and in fact also causes death in children. The children at the Pierre are therefore at risk of harm from the ETS/Secondhand smoke now in the building every day and will continue at risk unless and until the smoke is removed. There is no safe level of exposure. (Tab #3, p. 9) Filtration and ventilation cannot remove the risk of harm. In 2005 researchers at Cincinnati Children’s Hospital found that children’s exposure to ETS/Secondhand smoke was associated with cognitive deficits including math skills, reading and logic, in the children studied, aged 6—16 years, *Environmental Health Perspectives*, Vol. 113, Number 1, January 2005. The damage was done to those children studied even at extremely low levels of exposure to tobacco smoke, according to the study results. (Tab #4)

In 1997 the American Academy of Pediatrics reviewed the medical data then available and concluded that ETS/Secondhand smoke was a cause of harm to children in a number of ways: “Results of epidemiologic studies provide evidence that exposure of children to environmental tobacco smoke is associated with increased rates of lower respiratory illness and increased rates of middle ear effusion, asthma, and sudden infant death syndrome.” (Tab #4)

### **The ASHRAE Standards re: Clean Air/Tobacco Smoke**

The Pierre Board has discussed using HVAC methods to eliminate or control ETS/Secondhand smoke from areas other than smokers’ own units. We are presenting the Board with information—which has existed for years—indicating that no current HVAC technology can do that, i. e. eliminate the secondhand smoke. In fact, the national standards group to which all reputable HVAC outfits belong says that the only way to make a multi unit building safe from smoke is to ban smoking in the entire building. That standard is also accepted and now one of the national standards on HVAC of the American National Standards Institute (ANSI). The ASHRAE and ANSI standards are part of the reason that the Surgeon General’s report also concluded that ventilation and

filtration to not make non-smokers safe from smoke in a multi unit residential building.

Consequently, the Pierre cannot make the indoor air safe for non-smokers by employing HVAC “improvements” and, in fact, if any HVAC outfit says otherwise the Board should be wary of such claims since they are at total variance with national HVAC standards and ANSI standards. The American Lung Association confirms these conclusions: “Secondhand smoke cannot be controlled by any type of ventilation, air cleaning or separation of smokers from non-smokers. The only adequate solution to this problem is to make the building smoke free”. (Tab #5)

### ***Beyond Good Health: Other Reasons to Eliminate 2dHand Smoke from the Pierre***

**The Fire Issue:** Residential fires from smoking are a daily danger in buildings where tobacco smoking is allowed. The damage from fires caused by tobacco smoking is practically unbelievable (Tab #12.) Right now the Pierre is at greater risk of a fire due to tobacco smoking than it would be if all smoking were eliminated from the building.

**The Real Estate Value Issue:** Smoking stinks. And smokers’ apartments stink. And the carpeting and hallways outside smokers’ units stink. And the areas around smokers’ apartments stink. In addition to the now well-known health problems caused by ETS/2d Hand Smoke, now there is national data showing conclusively that smokers devalue their own property by smoking. According to the national data, up to 15% of properties for sale are “compromised by smoke” and therefore either impossible to market or have their values substantially reduced (Tab #15). We submit that on certain floors here at the Pierre, because of the effects of tobacco smoke, that surrounding owners’ units may be adversely affected in value because the overwhelming number of prospective new buyers are non smokers. They do not want to be greeted by cigarette or cigar smoke in the hallway on the way to viewing your apartment for sale. And make no mistake: Non smokers can detect smoking and the effects of smoking in a multiunit building.

### ***A Beginning: Surveying the Pierre Owners***

The American Lung Association has developed two separate survey or opinion poll forms to collect and gauge levels of interest and opinions of owners in regard to the dangers of 2<sup>nd</sup> Hand Smoke. The forms are attached at Tab #11. The committee suggests that the forms be combined and slightly modified/abbreviated and that one brief form be submitted to the unit owners at the Pierre along with a communication from the Board suggesting a quick turn around so that the data can be gathered before the August 2006 Board meeting.

These forms are designed to gather the data anonymously, and the Committee suggests same to the Board. The data received from this polling is useful to the representative of the American Lung Association/Chicago who has agreed to come to the Pierre and present information on these issues at a Board meeting. The target for that presentation is the September, 2006 Board meeting.

**Committee Recommendations**

1. The Board receive and review the Committee Report
2. The Board pay particular attention to the conclusions of the June 2006 Surgeon General's Report on Secondhand Smoke.
3. The Board formulate and publish, as a goal, a policy of eliminating tobacco smoke from the Pierre
4. The Board schedule a special meeting for the Committee to Present further information on these issues from a board certified M. D./ Pediatrician; and from a representative of the American Lung Association/Chicago
5. The Board allow/direct/supervise the Committee in circulating to all Owners an opinion survey regarding these issues; and discuss and decide whether the survey results should be received back by Board before presentation by MD and ALA/Chicago.
6. The Board **should educate owners** by providing information to Unit owners regarding current Declaration language and the Board's legal authorities in that regard; and by providing a portion of these materials, including the Surgeon General Report of June 2006.
7. The Board **should persuade owners** of the desirability of an agreed process of change to a smoke free Pierre
8. The Board provide the Committee with its Sense regarding this question: Is there a way to eliminate, by agreement and without further rule making, all smoking in the building? Is arbitration/mediation/informal discussion with a professional neutral an option to pursue?
9. The Board inquire: If all smoking eliminated, would casualty insurance policy premiums be reduced?
10. The Board consult with the Committee and confront the question: How are the sources of the smoke in the building to be identified?
11. The Board and Committee exchange info: what other efforts are underway, or should be underway, to clean the air and upgrade ventilation at the Pierre?
12. Finally, the Committee recommends that the Board defer on any further consideration of a use of the Board's legal prerogative to eliminate all smoking until all the foregoing 11 items are discussed and pursued to conclusion.

Respectfully Submitted,  
The Pierre Clean Air Committee

Timothy M. O'Brien  
Mark Feliciano

July 19, 2006

**VIII. New Business**

No new business.

**IX. Unit Owners Comments**

The recycling bins have been moved and they will be moved back to their original positions.

Andrew and Brooke Ariens in Unit 3F advised the Board that they received a kayak for a wedding gift, which they have been storing on their deck. Another unit owner complained to them in writing about this. They will look into an alternate place to store their kayak.

An owner pointed out the assessment due dates used to be the 15<sup>th</sup> of the month and the statements now read the 10<sup>th</sup> of the month. Dan Chalifoux responded that a new billing and accounting system is being implemented at Wolin-Levin and the issue should be resolved shortly.

**X. Adjournment**

The meeting was adjourned at 9:30 p.m. and the board went into executive session.

Minutes from Board Meetings are posted at [www.thepierre.com](http://www.thepierre.com)

To send an email to the Board of Directors use: [theboard@thepierre.com](mailto:theboard@thepierre.com)

To send an email to our Management Company use: [mgmtco@thepierre.com](mailto:mgmtco@thepierre.com)

Respectfully submitted by,  
Mary Gootjes  
Secretary